

Before the
COPYRIGHT ROYALTY JUDGES
The Library of Congress

In re

DISTRIBUTION OF CABLE
ROYALTY FUNDS

DISTRIBUTION OF SATELLITE
ROYALTY FUNDS

CONSOLIDATED DOCKET NO.
14-CRB-0010-CD/SD
(2010-13)

SETTLING DEVOTIONAL CLAIMANTS' FURTHER BRIEFING IN RESPONSE TO
MULTIGROUP CLAIMANTS' RESPONSE TO ORDER TO SHOW CAUSE

APPENDIX VOLUME 2

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APPENDIX

**TABLE OF CONTENTS AND
DECLARATION OF MATTHEW J. MACLEAN**

I, Matthew J. MacLean, hereby state and declare as follows:

I am a litigation partner in the law firm Pillsbury Winthrop Shaw Pittman LLP. I represent the Settling Devotional Claimants ("SDC") in this matter.

The Appendix submitted herewith contains true and correct copies of the following documents, by page number:

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| App. 1-7: | Order to Show Cause Why Multigroup Claimants Should Not Be Disqualified as an Agent to Receive Funds on Behalf of Claimants (Feb. 24, 2020) |
| App. 8: | Exhibit F from Multigroup Claimants' Response to Order to Show Cause - RESTRICTED (redacted in public version) |
| App. 9: | Exhibit G from Multigroup Claimants' Response to Order to Show Cause - RESTRICTED (redacted in public version) |
| App. 10: | Exhibit H from Multigroup Claimants' Response to Order to Show Cause - RESTRICTED (redacted in public version) |

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| App. 11-15: | Declaration of Brian Boydston in Support of Multigroup Claimants' Response to Order to Show Cause (Feb. 28, 2020) – RESTRICTED (redacted in public version) |
| App. 16: | Multigroup Claimants' Assumed Name Record (Bell Cnty. Tex. Jan. 20, 2015), produced by Multigroup Claimants |
| App. 17: | Authorization and Transfer to Multigroup Claimants (Jan. 20, 2015), produced by Multigroup Claimants |
| App. 18-34: | Multigroup Claimants' Opposition to (Second) Joint Motion to Strike Multigroup Claimants' Written Direct Statement and to Dismiss Multigroup Claimants from the Distribution Phase (Jan. 17, 2018) |
| App. 35-45: | Multigroup Claimants' Opposition to MPAA Motion to Quash Discovery Requests of Multigroup Claimants (Jan. 29, 2018) |
| App. 46-71: | Multigroup Claimants' Opposition to Settling Devotional Claimants' Motion to Quash Discovery Requests (Feb. 7, 2018) |
| App. 72-79: | Multigroup Claimants' Reply in Support of Notice of Consent to 2010-13 Cable and Satellite Shares Proposed by Settling Devotional Claimants, and Motion for Entry of Distribution Order (July 13, 2018) |
| App. 80-128: | Voluntary Petition for Individuals Filing for Bankruptcy, filed by Alfred Galaz and Lois Galaz (May 28, 2019), retrieved from Pacer.gov |
| App. 129-31: | Certificate of Filing and Assumed Name Certificate of Worldwide Subsidy Group (Jan. 6, 2020), filed with Multigroup Claimants' Opposition to Settling Devotional Claimants' Motion for Order to Show Cause |
| App. 132-35: | Alfred Galaz Declaration in Support of Multigroup Claimants' Opposition to Settling Devotional Claimants' Motion for Order to Show Cause (Jan. 9, 2020) |
| App. 136-38: | Declaration of Eva-Marie Nye in Support of Settling Devotional Claimants' Reply in Support of Motion for Order to Show Cause Why Multigroup Claimants Should Not Be Disqualified as an Agent to Receive Funds on Behalf of Claimants (Jan. 14, 2020) |
| App. 139-40: | Ex. A – Worldwide Subsidy Group Public Information Report (Sep. 13, 2016) |
| App. 141-42: | Ex. B - Worldwide Subsidy Group Public Information Report (Sep. 11, 2017) |

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| App. 143-45: | Ex. C - Worldwide Subsidy Group Public Information Report (June 23, 2018) |
| App. 146: | Declaration of Eva-Marie Nye in Support of Settling Devotional Claimants' Further Briefing in Response to Multigroup Claimants' Response to Order to Show Cause (Mar. 11, 2020) |
| App. 147-60: | Attachment – Florida Secretary of State records for RTG, LLC |
| App. 161-229: | Declaration of Ryan T. Galaz in Support of RTG, LLC's Request for Entry of Default Judgment, <i>RTG, LLC v. Jackson</i> , No. BC655159 (Cal. Super. Ct., L.A. July 19, 2017), retrieved from online docket |
| App. 230-87: | Declaration of Ryan T. Galaz in Support of RTG, LLC's Request for Entry of Default Judgment, <i>RTG, LLC v. Jackson</i> , No. BC655159 (Cal. Super. Ct., L.A. Oct. 23, 2017), retrieved from online docket |
| App. 288-92: | Declaration of Ryan T. Galaz in Support of RTG LLC's Opposition to Lisa Fodera's Motion for Partial Summary Judgment, <i>RTG, LLC v. Fodera</i> , No. 5:19-cv-87-DAE (W.D. Tex. Oct. 3, 2019) , retrieved from Pacer.gov |

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| App. 293-96: | Declaration of Michael Warley in Support of Settling Devotional Claimants' Further Briefing in Response to Multigroup Claimants' Response to Order to Show Cause (Mar. 12, 2020) |
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| App. 299-302: | Ex. 2 - Warranty Deed to Worldwide Subsidy Group - Lake Pancoast Property (Apr. 5, 2012) |
| App. 303-05: | Ex. 3 - LLC Certificate of Authority - Lake Pancoast Property (June 17, 2014) |
| App. 306-17: | Ex. 4 - Mortgage - Lake Pancoast Property (June 17, 2014) |
| App. 318-19: | Ex. 5 - Satisfaction of Mortgage - Lake Pancoast Property (Jan. 29, 2016) |
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| App. 323-26: | Ex. 7 - Quit Claim Deed to RTG - Lake Pancoast Property (Jan. 27, 2017) |
| App. 327-30: | Ex. 8 - Property Record Card - Prairie Ave. Property |
| App. 331-33 | Ex. 9 - Warranty Deed to RTG - Prairie Ave. Property (June 13, 2017) |
| App. 334-35: | Ex. 10 - Notice of Commencement - Prairie Ave. Property (Aug. 15, 2017) |
| App. 336-37: | Ex. 11 - Notice of Commencement - Prairie Ave. Property (Dec. 15, 2017) |
| App. 338-39: | Ex. 12 - Declaration of Restrictive Covenant - Prairie Ave. Property (Apr. 10, 2019) |
| App. 340-41: | Ex. 13 - Declaration of Restrictive Covenant - Prairie Ave. Property (Apr. 10, 2019) |
| App. 342-43: | Ex. 14 - Notice of Commencement - Prairie Ave. Property (Apr. 18, 2019) |
| App. 344-45: | Ex. 15 - Notice of Commencement - Prairie Ave. Property (May 9, 2019) |
| App. 346-47: | Ex. 16 - Claim of Lien - Prairie Ave. Property (Apr. 18, 2019) |
| App. 348-53: | Information, <i>United States v. Galaz</i> , Crim. No. 02-230 (D.D.C. May 30, 2002) |
| App. 354-63: | Plea Agreement, <i>United States v. Galaz</i> , Crim. No. 02-230 (D.D.C. May 30, 2002) |
| App. 364-89: | Memorandum Opinion and Order Following Preliminary Hearing on Validity of Claims, No. 2008-2 CRB CD 2000-03 (Phase II) (Mar. 21, 2013) |
| App. 390-414: | Ruling and Order Regarding Claims, No. 2008-1 CRB CD 98-99 (Phase II) (June 18, 2014) |
| App. 415-502: | Memorandum Opinion and Ruling on Validity and Categorization of Claims, Nos. 2012-6 CRB CD 2004-09 (Phase II), et al. (Mar. 13, 2015) |
| App. 503-25: | Comments of Raul Galaz to Proposed Rule Regarding Violation of Standards of Conduct (May 22, 2017) |

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| App. 526-27: | Final Order of Distribution, No. 2008-02 CRB CD 2000-03 (Phase II) (Mar. 22, 2016) |
| App. 528-37: | Order Directing Partial Distribution of Program Suppliers' Cable Royalties, Nos. 2012-6 CRB CD 2004-09 (Phase II), et al. (Nov. 9, 2016) |
| App. 538-46: | Order Granting IPG's Motion for Final Distribution of 1999 Cable Royalties (Devotional Category), No. 2008-1 CRB CD 1998-99 (Phase II) (June 12, 2007) |
| App. 547-81: | Declaration of Walter J. Kowalski (Oct. 9, 2014) (with exhibits) |
| App. 582-602: | Transcript of Testimony of Walter J. Kowalski (Dec. 11, 2014) |
| App. 603-18: | Collection of letters between counsel for Worldwide Subsidy Group, Public Broadcasting Service, and Bob Ross, Inc. (Feb. 7-Apr. 12, 2017), produced by counsel for Public Broadcasting Service (as to letters from Public Broadcasting Service) and by counsel for Bob Ross, Inc. (as to letters from Worldwide Subsidy Group and Bob Ross, Inc.) |
| App. 619-25: | Report of Handwriting Examination by John Hargett (Mar. 13, 2020) – RESTRICTED (redacted in public version) |
| App. 626-29: | Email between M. MacLean and B. Boydston (Feb. 28-Mar. 6, 2020) – RESTRICTED (pages removed in public version) |
| App. 630-34: | Email between M. MacLean and B. Boydston (Mar. 11-12, 2020) – RESTRICTED (pages removed in public version) |

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| App. 635-84: | Transcript of Raul Galaz, No. 2008-1 CRB CD 1999 (Phase II) (May 5, 2014) |
| App. 636-754: | Verified Deposition Transcript of Ryan Galaz, <i>RTG, LLC v. Fodera</i> (July 22, 2019), provided by Royal Lea, counsel for Lisa Katona Fodera |
| App. 755: | Ex. 1 – Ryan Galaz handwriting exemplars |
| App. 756-91: | Verified Deposition Transcript of Alfred Galaz, <i>RTG, LLC v. Fodera</i> (Dec. 12, 2019), provided by Royal Lea, counsel for Lisa Katona Fodera |

App. 8-15, App. 619-34, and the redacted portions of pages 1-10, 12-15, and 17 of the public version of the SDC's Further Briefing in Response to Multigroup Claimants' Response to

Order to Show Cause are submitted as Restricted – Subject to Protective Orders in Docket No. 14-CRB-0010-CD/SD (2010-13) solely because they contain information that has been designated as Restricted by Multigroup Claimants in Exhibits F, G, and H of Multigroup Claimants’ Response to Order to Show Cause.

I hereby declare under penalty of perjury that the foregoing is true and correct. Executed March 16, 2020, in Washington, District of Columbia.

/s/ Matthew J. MacLean
Matthew J. MacLean

Before the
COPYRIGHT ROYALTY JUDGES
The Library of Congress

In re

**DISTRIBUTION OF CABLE
ROYALTY FUNDS**

**CONSOLIDATED DOCKET NO.
14-CRB-0010-CD/SD
(2010-13)**

**DISTRIBUTION OF SATELLITE
ROYALTY FUNDS**

**DECLARATION OF MICHAEL WARLEY IN SUPPORT OF SETTling
DEVOTIONAL CLAIMANTS' FURTHER BRIEFING IN RESPONSE TO
MULTIGROUP CLAIMANTS' RESPONSE TO ORDER TO SHOW CAUSE**

I, Michael Warley, hereby state and declare as follows:

1. I am an attorney at Pillsbury Winthrop Shaw Pittman LLP and counsel to the Settling Devotional Claimants in the above-captioned proceedings.
2. I conducted a search of property records in Miami Dade County, Florida and reviewed records relating to two properties, 2421 Lake Pancoast Drive, #6A, Miami Beach FL 33140, and 4531 Prairie Ave, Miami Beach FL 33140, and acquired the following publicly recorded information and documents relating to these properties.

2421 Lake Pancoast Drive, #6A, Miami Beach FL 33140
3. Exhibit 1 is a copy, generated on March 11, 2020, of the Property Record Card from the Office of the Property Appraiser for the Lake Pancoast Drive property, recording public information relating to transactions involving this property.
4. Exhibit 2 is a copy of a Warranty Deed recording the purchase of the Lake Pancoast Drive property by Worldwide Subsidy Group, LLC on April 5, 2012. Exhibit 1 indicates Worldwide Subsidy Group purchased this property for \$265,000.00 on this date.

5. Exhibit 3 is a copy of an LLC Certificate of Authority dated June 17, 2014 indicating that Worldwide Subsidy Group resolved to obtain a mortgage for \$220,000.00 with the Lake Pancoast Drive property as collateral.
6. Exhibit 4 is a copy of the Loan Documents in which Worldwide Subsidy Group obtained a first mortgage on the Lake Pancoast Drive property for \$220,000.00 on June 18, 2014. This document states that Worldwide Subsidy Group owned the property “free and clear of all encumbrances except for real property taxes.” Ex. 4, at 2.
7. Exhibit 5 is a copy of the Satisfaction of Mortgage indicating that Worldwide Subsidy Group paid off the \$220,000.00 mortgage on the Lake Pancoast Drive property on January 29, 2016.
8. Exhibit 6 is a copy of a Certified Member Resolution and Incumbency Certificate of Worldwide Subsidy Group, LLC dated January 27, 2017, consenting to the conveyance of the Lake Pancoast Drive property to RTG, LLC.
9. Exhibit 7 is a copy of a Quit Claim Deed recording the conveyance of the Lake Pancoast Drive property from Worldwide Subsidy Group to RTG, LLC on January 27, 2017.

4531 Prairie Ave, Miami Beach FL 33140

10. Exhibit 8 is a copy, generated on March 11, 2020, of the Property Record Card from the Office of the Property Appraiser for the Prairie Ave property, recording public information relating to transactions involving this property.
11. Exhibit 9 is a copy of a Warranty Deed recording the purchase of the Prairie Ave property by RTG, LLC on June 13, 2017. Exhibit 8 indicates RTG, LLC purchased this property for \$900,000.00 on this date.

12. Exhibit 10 is a copy of an August 15, 2017 Notice of Commencement relating to renovations on the Prairie Ave property, bearing a signature of Raul Galaz as an “Authorized Member” of RTG, LLC.
13. Exhibit 11 is a copy of a December 15, 2017 Notice of Commencement relating to renovations on the Prairie Ave property, bearing a signature of Raul Galaz as an “Authorized Member” of RTG, LLC.
14. Exhibit 12 is a copy of a April 10, 2019 Declaration of Restrictive Covenant relating to the Prairie Ave property, bearing a signature of Raul Galaz “obo [on behalf of] RTG, LLC.”
15. Exhibit 13 is a copy of a different April 10, 2019 Declaration of Restrictive Covenant relating to the Prairie Ave property, identifying Raul Galaz as a “representative of RTG, LLC,” and bearing a signature of Raul Galaz “obo [on behalf of] RTG, LLC.”
16. Exhibit 14 is a copy of an April 18, 2019 Notice of Commencement relating to renovations on the Prairie Ave property, identifying Raul Galaz as a “Representative of RTG, LLC” and bearing a signature of Raul Galaz “obo [on behalf of] RTG, LLC” indicating Raul Galaz is RTG, LLC’s “Authorized Officer/Director/Partner/Manager.”
17. Exhibit 15 is a copy of a May 9, 2019 Notice of Commencement relating to renovations on the Prairie Ave property, identifying Raul Galaz as an “RTG, LLC representative,” as RTG, LLC’s “Power of Attorney,” and bearing a signature of Raul Galaz as RTG, LLC’s “Authorized Officer/Director/Partner/Manager”
18. Exhibit 16 is an April 18, 2019 Claim of Lien against the Prairie Ave property, indicating that RTG, LLC contracted for \$491,199.31 of work on the property and paid \$367,142.68 between August 1, 2017 and January 23, 2019, leaving \$124,056.63 unpaid.

I hereby declare under penalty of perjury that the foregoing is true and correct.

Executed March 12, 2020, in Washington, District of Columbia.

A handwritten signature in cursive script, appearing to read "Michael A. Warley".

Michael A. Warley

Exhibit 1

PROPERTY RECORD CARD

Generated Date: 03/11/2020

2016 Current

OFFICE OF THE PROPERTY APPRAISER

Roll Year: 2016

DOR CODE: 0407 RESIDENTIAL - TOTAL VALUE : CONDOMINIUM - RESIDENTIAL STATUS: ACTIVE EFLG:

** Note: values are subject to change due to tax roll corrections **

| | | | |
|------------------------------|------------------------|------------------------|-------|
| CURRENT OWNER AND MAILING: | LEGAL DESCRIPTION: | ACCOUNT FLAGS: | |
| WORLDWIDE SUBSIDY GROUP LLC | HELEN MAR CONDO | # CAT TYPE DESCRIPTION | VALUE |
| | UNIT 6A | | |
| 2421 LAKE PANCOAST DR APT 6A | UNDIV 1.91543% | | |
| MIAMI BEACH FL 33140-4688 | INT IN COMMON ELEMENTS | | |
| | OFF REC 13459-2570 | | |
| | OR 20239-4518 1101 4 | | |

| | | | |
|--------------|------------------|--------------------|--------------------------------|
| MCD: | 0200 Miami Beach | ZONING 1: | 3900 MULTI-FAMILY - 38-62 U/A |
| CTCASE: | N | % CAP: | 0.00 |
| HEX BASE YR: | 0 | DISTRICT: | 7 |
| AG: | N | PORT YR: | 0 |
| | | GPAR: | 0 |
| | | ZONING 2: | 0000 |
| | | NON-HEX BASE YR: | 2013 |
| | | EEL/CONS EASMNT: | N |
| | | EEL/CONS COVENANT: | N |
| | | NH CD: | 0.00 UNCLASSIFIED NEIGHBORHOOD |

| | | | | | | | | | |
|---------------------------------|-----|----------------|------|------------|------|--------|---|----------------|--------|
| ADDITIONAL PROPERTY INFORMATION | | | | | | | | | |
| LOT SIZE: | 0 S | BUILDING AREA: | 952 | L/B RATIO: | 0.00 | POOL: | N | AVG UNIT SIZE: | 952.00 |
| BUILDINGS: | 1 | YEAR BLT: | 1936 | EFF AGE: | 1936 | UNITS: | 1 | | |
| BDRM: | 2 | BATH: | 2 | 1/2 BTH: | 0 | EFF: | 0 | | |
| 1BD: | 0 | 2BD: | 0 | 3BD: | 0 | 4BD: | 0 | | |

| | | | | | |
|-----------------------|---------|---------|---------|--------------------|-------------|
| VALUE HISTORY: | 2014 | 2015 | 2016 | \$ UNIT OF MEASURE | \$ PER UNIT |
| LAND VALUE | 0 | 0 | 0 | 0.00 | |
| BUILDING VALUE | 0 | 0 | 0 | 0.00 | |
| MARKET VALUE | 217,590 | 348,140 | 362,066 | 380.32 | 362,066.00 |
| ASSESSED VALUE | 217,590 | 239,349 | 263,283 | | |
| TOTAL EXEMPTION VALUE | 0 | 0 | 0 | | |

| | | | | | | | | | | |
|--------------|---------|------------|-----|-------------|--------|--------|------|-----------------------------|-----------------------------|--|
| SALE HISTORY | | | | | | | | | | |
| # | AMOUNT | DATE | I/V | SALE TYPE | SALECD | ORBOOK | ORPG | GRANTOR | GRANTEE | |
| 05 | 362,100 | 01/27/2017 | I | Unqualified | 11 | 30409 | 2246 | WORLDWIDE SUBSIDY GROUP LLC | RTG LLC | |
| 01 | 265,000 | 04/05/2012 | I | Qualified | 01 | 28070 | 2062 | CAREN A RABBINO | WORLDWIDE SUBSIDY GROUP LLC | |
| 02 | 0 | 11/01/2001 | | Unqualified | 01 | 20239 | 4518 | | | |
| 03 | 119,000 | 02/01/1994 | I | Qualified | 00 | 16254 | 1211 | | | |
| 04 | 61,000 | 06/01/1989 | I | Qualified | 00 | 14193 | 0486 | | | |

| | | | | | | | | | | |
|------------------------------|-------------------------|-------------------------|--|--|--|--|--|--|--|--|
| PREVIOUS OWNER INFORMATION | | | | | | | | | | |
| 01 HELEN MAR PARTNERS | 02 GREGOR H FUHRMANN | 03 OR 14193-0486 0689 1 | | | | | | | | |
| 04 BERNARD RABBINO &W TINA & | 05 OR 16254-1211 0294 1 | 06 | | | | | | | | |

| | | | |
|-------------|------|------|------|
| EXEMPTIONS: | 2014 | 2015 | 2016 |
|-------------|------|------|------|

Exhibit 2



CFN 2012R0259874
DR Bk 28070 Pgs 2062 - 2064; (3pgs)
RECORDED 04/12/2012 11:05:55
DEED DOC TAX 1,590.00
HARVEY RUVIN, CLERK OF COURT
MIAMI-DADE COUNTY, FLORIDA

Prepared By:
MARIA CRISTINA DEL VALLE, ESQ.
MARIA CRISTINA DEL VALLE, P.A.
801 Brickell Avenue - Suite 900
Miami, Florida 33131
(305) 860-1224

Return to:
Eric J. Grabois, P.L.
407 Lincoln Road - Suite D
Miami Beach, Florida 33139
(305) 891-2029

FOLIO NO. 02-32270240060

WARRANTY DEED

THIS INDENTURE, made this 5th day of April 2012, between **Caren A. Rabbino, a single woman**, whose post office address is 525 West End Avenue, #4F, New York, New York 10024, Grantor, and **Worldwide Subsidy Group, LLC, a Texas limited liability company**, whose post office address is 2667 Rim Oak, San Antonio, TX 78232, Grantee,

WITNESSETH that said Grantor, for and in consideration of the sum of Ten (\$ 10.00) Dollars and NO/100, and other good and valuable considerations to said Grantor in hand paid by said Grantee, the receipt whereof is hereby acknowledged, has granted, bargained and sold to the said Grantee, and Grantee's heirs and assigns forever, the following described land, situated, lying and being in Miami-Dade County, Florida, to- wit:

Unit 6A, HELEN MAR CONDOMINIUM, according to the Declaration of Condominium thereof, as recorded in Official Records Book 13459, Page 2570, of the Public Records of Miami-Dade County, Florida.

A/k/a 2421 Lake Pancoast Drive, Unit 6A, Miami Beach, Florida 33140

SUBJECT TO: Comprehensive land use plans, zoning, restrictions, prohibitions and other requirements imposed by governmental authority, restrictions and matters appearing on the plat or otherwise common to the subdivision; the Declaration of condominium together with all exhibits and amendments thereto referred to in the legal description above, public utility easements of records; provided, however, nothing contained therein shall reimpose any of the same; and taxes for the year 2012 and thereafter/

Page 2 - WARRANTY DEED

and said Grantors do hereby fully warrant the title to said land, and will defend the same against the lawful claims of all persons whomsoever.

IN WITNESS WHEREOF, Grantor has hereunto set Grantor's hand and seal the day and year first above written.

Signed, sealed and delivered in our presence:

Witness #1 Signature: [Signature]

Witness #1 Print Name: Eric J. Grabis

[Signature]
Caren A. Rabbino

Witness #1 Signature: [Signature]

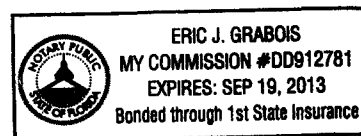
Witness #1 Print Name: Norma Reren

STATE OF FLORIDA
COUNTY OF MIAMI-DADE

I HEREBY CERTIFY that on this day before me, an officer duly authorized to take acknowledgments, personally appeared, **Caren A. Rabbino, a single woman**, to me known to be the person described in and who executed the foregoing instrument and who acknowledged before me that she executed the same, and who has produced Driver's License as personal identification(s) and who did take an oath.

WITNESS my hand and seal in the County and State last aforesaid this 5th day of April 2012.

[Signature]
NOTARY PUBLIC, STATE OF FLORIDA
My Commission Expires:



Helen Mar Condominium Association, Inc.

C/o Royal Management Group, 747 4th Street Suite 200, Miami Beach, FL 33139. Tel 305.535.3575 Fax 305.532.7242

CERTIFICATE OF APPROVAL

Condominium **Unit 6A** Address: 2421 Lake Pancoast, Miami Beach, FL 33139 of
Helen Mar Condominium Association, Inc a condominium as recorded in the Public
Records of Dade County, Florida.

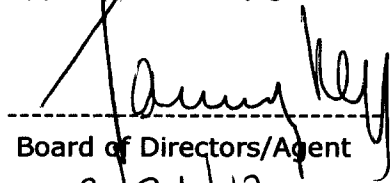
At the request of the present owner, **Caren Rabbino**, the undersigned officers of
Helen Mar Condominium Association, Inc. Operating the above described
Condominium Association, hereby certify the following:

1. That **Worldwide Subsidy Group, LLC (Denise G. Vernon)**, as Buyer has
been duly approved by the Board of Directors pursuant to the provisions of
the described Declaration's By-Laws.
2. That all assessments against the above unit for common expenses and special
assessments present a balance of **\$0.00**. The next scheduled monthly
maintenance payment is **April 1st , 2012** in the amount of **\$619.00**
3. Buyer has received condominium documents, rules & regulations.
4. Buyer acknowledges there are rental restrictions allowed in the building and
pets must be registered.

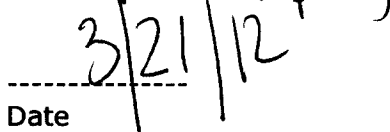
**Buyer agrees to provide the management company with a copy of The
Closing Statement within 7 days; if not, a \$75.00 title search fee will be
applied to the next monthly payment.**

** phny interview*

Approval is hereby granted:



Board of Directors/Agent



Date

Buyer

Buyer

Exhibit 3



THIS INSTRUMENT PREPARED BY
AND AFTER RECORDING RETURN TO:

Ana Cosculluela, Esq.
Russell S. Jacobs, P.A.
20700 West Dixie Highway
Aventura Florida 33180

CFN 2014R0456006
OR Bk 29208 Pgs 0901 - 902; (2pgs)
RECORDED 06/26/2014 11:36:58
HARVEY RUVIN, CLERK OF COURT
MIAMI-DADE COUNTY, FLORIDA

LLC CERTIFICATE OF AUTHORITY

STATE OF OKLAHOMA
COUNTY OF GRADY

DENISE VERNON, as the sole manager of WORLDWIDE SUBSIDY GROUP LLC, a Texas limited liability company (the "Company"), being duly sworn, hereby deposes and says:

1. The Company is a limited liability company organized under the laws of the State of Texas and in good standing in that state.
2. The Articles of Organization for the Company are in full force and effect as of the date hereof and have not otherwise been supplemented, modified amended, restated or rescinded.
3. The Company does not have an Operating Agreement.
4. This Certificate is given in connection with the following-described real property owned by the Company (the "Property"):

Unit No. 6A, HELEN MAR CONDOMINIUM, according to the Declaration of Condominium thereof, as recorded in Official Records Book 13459, Page 2570, of the Public Records of Miami-Dade County, Florida.
5. The Company is a manager-managed limited liability company.
6. Affiant is the sole manager of the Company, duly-appointed, authorized and empowered to act on behalf of the Company.
7. Affiant is duly authorized, empowered and directed to execute any and all documents relating to the financing of the Property and to take any and all actions incidental thereto.
8. No dissolution, bankruptcy, or insolvency proceedings for the Company or its Manager have been filed or commenced from the date the Company acquired to title the Property to the date hereof.
9. The Company is not one of a family or group of entities.
10. The following resolutions were duly authorized by unanimous written consent of all members, remain in full force and effect and have not been otherwise modified or rescinded:

RESOLVED that

It is the best interest of the Company to obtain a loan in an amount not to exceed \$220,000.00 (the "Loan") from Justin Bright, as Trustee of the Justin Bright Irrevocable Trust dated March 26, 2009 (the "Lender"), and to secure the indebtedness due Lender with a mortgage encumbering certain real property of the Company located in Miami-Dade County, Florida, and more particularly described as follows (the "Property"):

Unit No. 6A, HELEN MAR CONDOMINIUM, according to the Declaration of Condominium thereof, as recorded in Official Records Book 13459, Page 2570, of the Public Records of Miami-Dade County, Florida.

Property Address: 2421 Lake Pancoast Drive, Unit 6A, Miami Beach, FL 33140

and such other security as may be required by the Lender. All actions heretofore or hereafter taken by the Manager of the Company in connection with the negotiating and closing of the Loan are hereby ratified, confirmed and approved.

FURTHER RESOLVED that


DENISE VERNON, as Manager, is hereby authorized, empowered and directed: (a) to negotiate the specific terms and conditions of the Promissory Note, the Mortgage, and any and all additional loan documents as may be necessary for the granting of the Loan (collectively, the "Loan Documents") (b) to execute and deliver to the Lender the Loan Documents and any and all affidavits, closing statements, and other required documents on behalf of the Company, and (c) to take any and all other actions required in connection therewith as he may, in his sole discretion, deem necessary or desirable to consummate the loan transaction.

11. This Affidavit is given to induce Russell S. Jacobs, P.A., as agent for Old Republic National Title Insurance Company, to insure the priority of the Lender's mortgage lien on the Property.


Denise Vernon - Manager

SWORN TO AND SUBSCRIBED before me this 17th day of June, 2014 by Densie Vernon, as Manager of Worldwide Subsidy Group LLC, who ☐ is personally known to me, or ☒ produced a Texas DL as identification.

My commission expires: 10/4/16


NOTARY PUBLIC
04008975

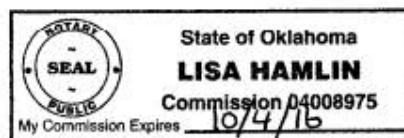


Exhibit 4

**THIS INSTRUMENT PREPARED BY
AND AFTER RECORDING RETURN TO:**

Ana Cosculluela, Esq.
Russell S. Jacobs, P.A.
20700 West Dixie Highway
Aventura, FL 33180

Property Tax ID No.: 02-3227-024-0060

CFN 2014R0456005
OR Bk 29208 Pgs 0890 - 900; (11pgs)
RECORDED 06/26/2014 11:36:58
MTG DOC TAX 770.00
INTANG TAX 440.00
HARVEY RUJIN, CLERK OF COURT
MIAMI-DADE COUNTY, FLORIDA

**MORTGAGE, ASSIGNMENT OF LEASES RENTS AND PROFITS
AND SECURITY AGREEMENT**

THIS MORTGAGE, ASSIGNMENT OF LEASES RENTS AND PROFITS AND SECURITY AGREEMENT (the "Mortgage") is given this 18th day of June, 2014 by:

Worldwide Subsidy Group, LLC
a Texas limited liability company
("Mortgagor")
Address: 1209 W. Minnesota Ave., Chickasha, OK 73018

in favor of:

Justin Bright, as Trustee of the Justin Bright Irrevocable Trust dated March 26, 2009 ("Lender")
Address: c/o Evergreen Note Servicing, 6121 Lakeside Drive, Suite 150, Reno, NV 89502

WHEREAS Mortgagor is justly and lawfully indebted to the Lender in the principal sum of TWO HUNDRED TWENTY THOUSAND AND 00/100 DOLLARS (\$220,000.00) (the "Loan"), as evidenced by that certain Promissory Note of even date herewith executed and delivered by Mortgagor to Lender (the "Note"). This Mortgage secures to Lender: (a) the repayment of the debt evidenced by the Note, with interest, and all renewals, extensions and modifications thereof; (b) the payment of all other sums, with interest, advanced by Lender to protect the security of this Mortgage; and (c) the performance of Mortgagor's covenants and agreements under this Mortgage and the Note. [The Note, this Mortgage and any other documents given to evidence, secure or guarantee the Loan, or otherwise given in connection with, related to or arising out of the Loan, are hereinafter collectively referred to as the "Loan Documents."]

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NOW THEREFORE, in consideration of the mutual covenants herein set forth, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Mortgagor does hereby mortgage, grant and convey to Lender the real property located in **Miami-Dade County, Florida**, more particularly described as follows (the "Property"):

Unit No. 6A, HELEN MAR CONDOMINIUM, according to the Declaration of Condominium thereof, as recorded in Official Records Book 13459, Page 2570, of the Public Records of Miami-Dade County, Florida.

Property Address: 2421 Lake Pancoast Drive, Unit 6A, Miami Beach, FL 33140

TOGETHER WITH all the improvements now or hereafter erected thereon, and all easements, rights of way, tenements, hereditaments appurtenances, rents, royalties, mineral, oil and gas rights and profits, water rights, development rights, permits, licenses, reversions, remainders, and rents, issues, profits and proceeds thereof, now or hereafter a part of or otherwise relating to the real property or the improvements located thereon, together with all additions thereto and replacements thereof.

TOGETHER WITH all appliances, machinery, equipment, fittings, fixtures, furniture, furnishings, and articles of personal property of every kind and nature whatsoever now or hereafter owned by Mortgagor and located in, upon or under the real property or any improvements located thereon (whether actually or constructively attached thereto) and used or usable in connection with any present or future operations conducted on the real property or such improvements, together with all additions, substitutions, improvements, substitutions and replacements thereof.

TOGETHER WITH all the rights, interest and privileges which Mortgagor, as lessor, has and may have in the leases or tenancies (oral or written) now existing or hereafter made and affecting the Property as such leases or tenancies may have been, or may from time to time be hereafter modified, extended and renewed, with all rents, income and profits due and becoming due thereunder.

TOGETHER WITH all construction permits, licenses, plans and specifications, architectural drawings, construction contracts, labor, materials and supplier contracts, architectural and engineering contracts construction bonds, and utility contracts,

TOGETHER WITH all causes of action of Mortgagor relating to the Property hereby encumbered and all judgments, awards or damages (including but not limited to severance and consequential damages), payments, proceeds, settlements or other compensation heretofore or hereafter made, including interest thereon and including but not limited to condemnation awards and insurance proceeds.

AND Mortgagor covenants that Mortgagor is lawfully seized of the fee simple estate in the Property hereby conveyed and has good and lawful right and full power to mortgage, grant, convey and encumber the Property and that the Property is free and clear of all encumbrances except for real property taxes for the current year which are not yet due and payable. Mortgagor will warrant and defend the title to the Property against all lawful claims and demands arising after the date of this Mortgage.

PROVIDED, HOWEVER, that these presents are upon the condition that if Mortgagor: (a) shall pay or cause to be paid to Lender the principal and all interest due the Lender and any other sums secured by this Mortgage, at the time and in the manner stipulated in the Note or this Mortgage; (b) shall punctually perform, keep and observe all and singular the covenants and promises in the Note, any future advance agreement(s), any renewals, extensions or modifications thereof, and in this Mortgage; and (c) shall not permit or suffer to occur any default under this Mortgage or the Note, then this Mortgage and all the interest and rights hereby granted, bargained, sold, conveyed, assigned, transferred, mortgaged, pledged, delivered, set over, warranted and confirmed shall cease, terminate and be void.

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Mortgagor further covenants and agrees with Lender as follows:

1. **Purpose.** This Mortgage is given as security for the performance and observance of the covenants and agreements herein contained and to secure to the Lender the performance and payment of the obligations set forth in the Loan Documents, including, without limitation, the Note, according to the terms thereof, to the order of Lender.

2. **Payment of Principal and Interest.** Mortgagor shall promptly pay when due the principal and interest on the debt evidenced by the Note, in accordance with the terms and provisions thereof.

3. **Taxes and Liens.** Mortgagor shall pay all sums, the failure to pay which may result in the acquisition of a lien prior to the lien of this Mortgage before such a prior lien may attach, or which may result in conferring upon a tenant of any part of the Property a right to recover such sums as prepaid rent, or as a credit or offset against any future rental obligation. Mortgagor shall promptly pay all sums, taxes, assessments, charges, fines and impositions attributable to the Property. Mortgagor shall pay these obligations on time directly to the person owed payment. Mortgagor shall promptly furnish to Lender all notices of amounts to be paid under this paragraph. If Mortgagor makes these payments directly, Mortgagor shall promptly furnish to Lender, receipts evidencing such payments. Mortgagor's failure to timely pay such taxes, assessments and charges shall be deemed a default hereunder. Notwithstanding the foregoing, Lender may require that Mortgagor establish and maintain an escrow account with Lender for such payments and/or Lender may, in its sole discretion, advance any such sums as may be due for such taxes, assessments and charges and same shall be secured hereby, as set forth in Paragraph 15 hereof.

4. **Insurance.** Mortgagor shall at all times during the term of the Loan maintain the following insurance coverage:

a. as to all types of properties: (i) general comprehensive liability insurance with limits of not less than \$300,000 Dollars as to personal injury or death, and with limits of not less than \$300,000 with respect to property damages on a replacement cost basis; and (ii) during any construction on the Property, builder's risk, if applicable, at the highest insurable value on a replacement cost basis and in accordance with local insurance practice;

b. as to a condominium unit: (i) an HO6 insurance policy, with full replacement cost coverage, and (ii) naming the Lender as loss payee as to the subject unit on the Condominium Association's master insurance policy;

c. as to all other real property (including but not limited to single-family residences, duplexes, commercial property) (i) "all risk" property insurance covering all buildings, improvements and equipment now or hereafter located on the real property, at their highest insurable value on a replacement costs basis, including but not limited to windstorm insurance and, if applicable, flood insurance, and (ii) for income-producing property, business interruption and/or loss of rents insurance, as applicable, to insure the income stream for a period of not less than twelve (12) months.

Such insurance policies shall name Lender as an additional insured, mortgagee and first loss payee, as applicable, and shall be non-cancellable without at least thirty (30) days' advance written notice to Lender. Mortgagor shall deliver to the Lender evidence of continuing insurance coverage at least fifteen (15) days before the date any existing policy expires. Mortgagor's failure to timely pay such insurance premiums or to maintain adequate insurance shall be deemed a default hereunder. Notwithstanding the foregoing, Lender may require that Mortgagor establish and maintain an escrow account with Lender for such payments and/or Lender may, in its sole discretion, advance any such sums as may be due for such insurance and related charges and or purchase adequate insurance where Borrower fails to and any such payments shall be secured hereby, as set forth in Paragraph 15 hereof.

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Mortgagor shall give prompt written notice to Lender of the happening of any casualty to the Property. In the event of damage to or destruction of any improvements on the Property, Lender shall have the option, in its sole discretion, of applying or paying all or part of the insurance proceeds (i) to any indebtedness secured hereby and in such order as Lender may determine, and/or (ii) to the restoration of the Property or its improvements, and/or (iii) to Mortgagor. Notwithstanding the preceding sentence, Mortgagor may use insurance proceeds for restoration of the Property or its improvements following a partial casualty loss, for which the cost of restoration (as reasonably determined by Lender) is \$10,000 or less, subject to (i) Mortgagor maintaining the Mortgage free from default at all times, (ii) Mortgagor providing evidence that adequate funds are available to restore the improvements and advancing any additional funds required prior to the disbursement of insurance proceeds, and (iii) Mortgagor provides to Lender proof of restoration of the Property or its improvements and proof of payment of all sums due in connection therewith. Lender or its agent shall be granted access to the Property to confirm that the Mortgagor has restored the Property or improvements as herein set forth to the satisfaction of Lender.

In the event any loss or damage, all proceeds of insurance shall be payable to Mortgagor and Lender, Mortgagor hereby authorizes and directs any affected insurance company to make payment of such proceeds directly to Lender for proceeds in excess of \$10,000. Mortgagor hereby irrevocably appoints Lender its attorney-in-fact coupled with an interest with the power and authority to endorse any checks, drafts or other instruments representing any proceeds of such insurance, whether payable by reason of loss thereunder or otherwise. Notwithstanding any insurance proceeds received by Lender and actually applied to the indebtedness secured hereby, nothing herein contained shall be deemed to excuse Mortgagor from repairing or maintaining the Property as provided in this Mortgage or restoring all damage or destruction to the Property, regardless of whether or not there are insurance proceeds available or whether any such proceeds are sufficient in amount, and the application or release by Lender of any insurance proceeds shall not cure or waive any default or notice of default under this Mortgage or invalidate any act done pursuant to such notice. Nothing herein shall relieve Mortgagor from making the payments required under the Note or of any other obligation of Mortgagor secured hereby.

5. Assignment of Leases, Rents and Profits. As further security for repayment of the Loan, Mortgagor hereby assigns and transfers to Lender, as an outright assignment and not solely as a collateral assignment, all rents, income, issues and profits of the Property and all right, title and interest of Mortgagor in and under all leases and tenancies (and any extensions and renewals thereof) now or hereafter affecting the Property; provided, however, that no such assignment shall be construed as a consent by the Lender to any lease or tenancy so assigned, or to impose upon the Lender any obligations with respect thereto. Notwithstanding the foregoing, provided that there is no default in the performance or observance of any of the covenants or agreements contained in the Note or this Mortgage, Lender grants to Mortgagor a revocable license to collect and receive all rents, income, issues and profits accruing under or arising as a result of the leases and tenancies of the Property or any part thereof. Upon the occurrence of any default under the Note or this Mortgage, or at any time during its continuance, the license and all right of Mortgagor to collect or receive rents or profits shall wholly and automatically terminate without notice to Mortgagor and Lender may notice and authorize the tenants to make payment directly to Lender. The collection of rents hereunder by Lender shall not be deemed to impose on Lender any liability relative to the Property, the leases or tenancies, or the rents, issues and profits thereof. Mortgagor will faithfully keep and perform all of the obligations of as landlord under applicable law and all of the leases and tenancies now or hereafter assigned to the Lender, will promptly notify and seek collection of past due rent and will promptly commence eviction proceedings.

6. Maintenance of Property; No Waste. Mortgagor will keep the Property in good order and repair and will not commit or suffer any waste or stripping of the Property or any violation of any law, regulation, ordinance or contract affecting the Property or the use or occupancy thereof and will not commit or suffer any demolition, removal or material alteration of any of the buildings or improvements (including fixtures) on the Property without the prior written consent of the Lender, which consent will not be unreasonably withheld, conditional or delayed. Mortgagor has obtained and shall maintain in good standing any and all necessary permits and licenses with respect to the Property and any and all uses or occupancies thereon. All necessary utilities are and at all times hereunder shall be available in sufficient capacity to satisfactorily service the Property.

The Mortgagor will not acquire any appliances, equipment, machinery, furniture, furnishings, fixtures or apparatus covered by this Mortgage subject to any security interest, conditional sale, title retention arrangement or other charge or lien taking precedence over this Mortgage. The Mortgagor shall have the right to add, substitute or replace such appliances, machinery and equipment during the term hereof, provided, however, that the Mortgagor shall not so add, substitute or replace in such a manner as to substantially diminish or impair the value of the security of this Mortgage and provided further that all of the right, title and interest of the Mortgagor in all such replacement or additional appliances, machinery and equipment shall, when acquired by the Mortgagor, be encumbered by the lien of this Mortgage and become an integral part of the security under this Mortgage. In events of removal of non-material assets by the Mortgagor, the Mortgagor shall not be required to replace such assets as contemplated herein unless such removal without replacement will serve to substantially diminish or impair the value of the security of this Mortgage or materially affect the business operations of the Mortgagor on the Property or Mortgagor's ability to fulfill its obligations hereunder. The Mortgagor expressly agrees that it shall not, without replacing same, remove as part of the Property any tangible personal property or fixture having a salvage value in excess of \$500. For the purposes of this paragraph, non-material assets are those items of personal property having a salvage value of \$500 or less.

7. **Laws and Ordinances.** Mortgagor shall at all times during the term hereof comply with and conform to the requirements of all federal, state and local laws, ordinances, regulations, conditions and restrictions applicable or pertaining to, or affecting, the Property and improvements described herein or the business and operations of the Mortgagor, and Mortgagor shall not knowingly commit, suffer or permit any act to be done in violation thereof, including, without limitation, all federal, state and local pollution control laws and regulations affecting the Property.

8. **INTENTIONALLY DELETED.**

9. **Inspection.** Lender or its agent may, upon reasonable notice, make reasonable entries upon and inspections of the Property for the purpose of inspecting same and/or ascertaining that the various requirements and restrictions contained herein are being complied with by the Mortgagor.

10. **Prohibited Encumbrances and Transfers; Due on Sale.** Mortgagor shall not grant any lien or mortgage on all or any part of the Property or any interest therein, nor make any further assignment of the leases, rents or profits of the Property, without the prior written consent of Lender, which consent Lender may grant or withhold in its sole discretion. Mortgagor shall not mortgage, sell, convey, transfer, exchange, pledge or hypothecate all or any portion of the title to all or any portion of the Property or any interest therein, either voluntarily or by operation of law. As used in this paragraph, "transfer" shall include without limitation: (i) any sale or conveyance of the Property or any part thereof, or any interest therein, except leases for occupancy subordinate to this Mortgage; and (ii) if the Mortgagor should at any time be a legal entity (corporation, limited liability company, limited partnership), the sale, assignment, conveyance, transfer, pledge or hypothecation of any ownership interest (stockholder interest, membership interest, partnership, as applicable) in Mortgagor or any conversion or merger not authorized by the written consent of Lender, it being acknowledged by Mortgagor that, if the Mortgagor or the borrower under the Loan is a legal entity, Lender has relied on the financial worthiness and/or credit of the principals of Mortgagor or the borrower in granting the Loan and, to the extent applicable, on the special-purpose nature of the Mortgagor or borrower.

Mortgagor shall pay all sums, the failure to pay which may result in the acquisition of a lien against the Property prior to the lien of this Mortgage before such a prior lien may attach. Mortgagor represents and warrants that it will perform and promptly fulfill all of the covenants contained in any inferior mortgages on any and all of the Property encumbered hereby, which have been approved by Lender. In the event Mortgagor shall fail to do so, Lender may, in addition to the rights otherwise granted Lender hereunder, at its election, perform or fulfill such covenants of any such inferior mortgages without affecting its option to foreclose any of the rights hereunder. Mortgagor covenants and agrees that it shall not file, pursuant to Section 697.04(1)(b), Fla. Stat., an instrument of record limiting the maximum amount which may be secured by this Mortgage.

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11. Release/Substitution of Collateral. Lender may, in its sole and absolute discretion but without any obligation to do so, release any portion of the Property for such consideration as Lender may require without, as to the remainder of the Property, in any way impairing or affecting the lien or priority of this Mortgage, or improving the position of any subordinate lienholder with respect thereto, except to the extent that the Mortgagor's obligations secured hereunder shall have been reduced by the actual monetary consideration, if any, received by Lender for such release, and may accept by assignment, pledge or otherwise any other property in place thereof as Lender may require without being accountable for so doing to any other lienholder. Upon such release or substitution of collateral this Mortgage shall continue as a lien and security interest in the remaining portion of the Property.

12. Condemnation. Should the Property or any part thereof or interest therein, be taken or damaged by reason of any public use or improvement or condemnation proceeding, or in any other manner ("Condemnation") or should Mortgagor receive any notice or information regarding such Condemnation, Mortgagor shall give prompt written notice thereof to Lender.

Lender shall be entitled to all awards granted in connection with such Condemnation ("Awards") and shall be entitled, at its option, to appear in its own name or the Mortgagor's name, in any action or proceeding relating thereto. In the event of such an appearance, Mortgagor agrees to pay reasonable attorneys' fees incurred by Lender. All Awards payable to Mortgagor are a portion of the Property secured hereby and are hereby assigned to Lender, and Mortgagor agrees to execute such further assignments thereof as Lender may require from time to time.

In the event any portion of the Property is so taken or damaged, Lender shall have the option in its sole and absolute discretion to a) retain and apply all such Awards, after deducting therefrom all costs and expenses (regardless of the particular nature thereof or whether incurred with or without suit), including attorneys' fees incurred by it in connection with such Awards, upon any indebtedness secured hereby, or b) apply all such Awards after such deductions to the restoration of the Property upon such conditions as Lender may determine. Such application or release shall not cure or waive any default or notice of default hereunder or invalidate any action done pursuant to such notice. Any amounts received by Lender hereunder and applied to the Loan as per (a) above shall be applied in payment of any accrued interest and then in reduction of the then outstanding principal sum of the Loan secured hereby, notwithstanding that same may not then be due and payable.

13. Financial Statements; Books and Records. Mortgagor will deliver to the Lender, in detail satisfactory to the Lender, on or before March 31 of each calendar year, financial statements for Mortgagor for the prior calendar year. Lender and its representatives shall have the right to inspect all books of accounts relating to the Property and the financial and business requirements contained herein (and to make copies or extracts therefrom) and to cause such books to be audited by such independent public accountants selected by the Lender.

14. Future Advances. This Mortgage is given to secure not only the existing indebtedness of TWO HUNDRED TWENTY THOUSAND AND 00/100 DOLLARS (\$220,000.00) of the Mortgagor to the Lender evidenced by the Note secured hereby, but also such future advances not exceeding the maximum principal sum of FOUR HUNDRED FORTY THOUSAND AND 00/100 DOLLARS (\$440,000.00) as are made within twenty (20) years from the date hereof, plus interest thereon, and any disbursements made by Lender for the payment of taxes, insurance or other liens on the Property, with interest on such disbursements, which advances shall be secured hereby to the same extent as if such future advances were made this date and which advances shall have the same priority as the original indebtedness evidenced by the Note. The total amount of indebtedness secured hereby may increase or decrease from time to time. Mortgagor covenants and agrees that it shall not file, pursuant to Section 697.04(1)(b), Fla. Stat., an instrument of record limiting the maximum amount which may be secured by this Mortgage. The provisions of this paragraph shall not be construed to imply any obligation on Lender to make any future advances, it being the intention of the parties that any future advances shall be solely at the discretion and option of Lender. Any reference to the Note in this Mortgage shall be construed to include any future advances made pursuant to this paragraph.

15. **Advances Hereunder.** In the event of any default in the performance of any of Mortgagor's covenants or agreements contained in this Mortgage Lender shall have the right (but in no event the obligation) at its option to cure the default or take any other action Lender deems necessary or desirable to protect its security (including without limitation the payment of any taxes, assessments, premiums, charges, liens or encumbrances required of Mortgagor under this Mortgage), without thereby waiving any rights or remedies otherwise available to Lender. If Lender shall elect to advance at any time any sum(s) for the protection of its security or for any other reason permitted or provided by any of the terms of this Mortgage then such sum(s) shall be deemed Loan funds, shall be evidenced by the Note and secured by this Mortgage and shall bear interest until paid at the "default rate" provided in the Note commencing on the date they are advanced by Lender. If advanced by Lender before the (natural or accelerated) maturity date of the Loan, such sum(s) shall be due and payable by Mortgagor on such maturity date or ten (10) days following Mortgagor's receipt of demand therefor, whichever is earlier, but if advanced after the (natural or accelerated) maturity date, such sum(s) shall be due and payable immediately without demand. Lender's lien on the Property for such advances shall be superior to any right or title to, interest in, or claim upon all or any portion of the Property junior to the lien of this Mortgage. Without the prior written consent of Lender, which Lender may grant or withhold in its sole discretion, Mortgagor shall not file for record any notice limiting the maximum principal amount that may be secured by this Mortgage.

16. **Estoppel Letters and Information.** Upon request made either personally or by mail, Mortgagor shall certify to Lender (or to any proposed assignee of this Mortgage) in writing within five (5) days of receipt of a request therefore, the amount of principal and interest and other sums then owing on the Loan and whether any offsets or defenses exist against the payment of the Loan. Mortgagor shall promptly furnish to Lender any financial or other information regarding Mortgagor or the Property required by any other documents evidencing and/or securing the Loan or which Lender may reasonably request from time to time.

17. **Uniform Commercial Code.** This Mortgage shall, in addition to constituting a mortgage, constitute a Security Agreement, as defined in the Florida Uniform Commercial Code. The remedies for any violation of the covenants, terms and conditions contained in this Mortgage shall be as prescribed: (i) in this Mortgage, (ii) by general law or (iii) as to any items included in the definition of the Property that may also be listed in any filed financing statement, by the specific statutory provisions now or hereafter enacted and specified in the Florida Uniform Commercial Code, all at Lender's sole election.

18. **Default.** At Lender's option, all of the principal and interest and other sums secured by this Mortgage shall immediately or at any time thereafter become due and payable without notice to the Mortgagor, and Lender shall immediately have all the rights and remedies accorded Lender by law and hereunder to enforce this Mortgage or the Note upon the occurrence of any of the following events of defaults:

- a. if any payment of principal, interest, or other sum due the Lender under the terms of the Note, this Mortgage or any other Loan Documents is not paid as and when due, after expiration of any applicable grace period;
- b. any default in the observance or performance of any other covenant or agreement contained in the Loan Documents, the occurrence of any other event prohibited by the terms of the Loan Documents, or the violation of any other provision of the Loan Documents;
- c. if any representation, warranty, affidavit or statement made or delivered to Lender by Borrower or any guarantor shall be deemed by Lender to be false, incorrect or misleading;
- d. the institution of any proceeding in bankruptcy, reorganization or insolvency against or by the Borrower or a guarantor, if any, or the appointment of a trustee or receiver of the Borrower's or a Guarantor's property; or
- e. the death or incapacity of a Borrower or a guarantor who is a natural person, or the dissolution, termination of existence, merger or consolidation of a Borrower or guarantor that is a legal entity, trust or other such entity.

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Any forbearance by Lender in exercising any right or remedy shall not be a waiver of or preclude the exercise of any right or remedy with respect to any further default of the same or a different nature. No consent or waiver shall be deemed or construed to exist by reason of any curative action initiated by Lender. Lender is not required to pay or advance any funds to cure a default prior to availing itself of its remedies hereunder.

19. Acceleration; Remedies. Upon the occurrence of any event of default by Mortgagor under this Mortgage or the Note, Lender may without notice or demand exercise all rights and remedies provided in this Mortgage or the Note and/or which may be available to Lender by law that Lender deems advisable to protect and enforce its rights against Mortgagor and in and to the Property and all such rights and remedies shall be cumulative and concurrent and may be pursued singularly, successively or concurrently, at Lender's sole option, and may be exercised as often as occasion therefor shall arise. Lender may resort for the payment of the Loan to any other security held by Lender in such order and manner as Lender, in its discretion, may elect. Lender may take action to recover the Loan, or any portion thereof, or to enforce any covenant hereof without prejudice to the right of Lender thereafter to foreclose this Mortgage. The rights of Lender under this Mortgage shall be separate, distinct and cumulative and none shall be given effect to the exclusion of the others. No act of Lender shall be construed as an election to pursue one remedy herein to the exclusion of any other remedy. Lender shall not be limited exclusively to the rights and remedies herein stated but shall be entitled to every right and remedy now or hereafter afforded at law or in equity.

Upon the occurrence of an event of default as aforesaid, Lender may, *inter alia*, anything herein contained to the contrary notwithstanding:

- a. declare the Loan, all interest thereon and all other amounts payable thereunder to be immediately due and payable, without presentment, demand, protest, or further notice of any kind, all of which are hereby expressly waived by Mortgagor.
- b. initiate a lawsuit to enforce the Note and/or any guaranties given in connection herewith and/or to foreclose this Mortgage and proceed thereon to collect all sums due hereunder, including pre-trial, trial and appellate level attorneys' fees and costs.
- c. institute an action, suit or proceeding in equity for the specific performance of any covenant, condition or agreement contained herein, in the Note or in any other Loan Documents.
- d. appoint a receiver for the benefit of Lender to enter upon, take possession of and manage the Property and collect the benefits and all rents, revenues, issues, income, products and profits thereof and of the Property, without liability for trespass, damages or otherwise and without regard for the adequacy of the security for the Loan and without regard for the solvency of Mortgagor, any guarantor or indemnitor under the Loan or any other person or entity liable for the payment of the Loan. The Lender, and/or its receiver shall have the right, but not the obligation, to (i) use, operate, manage, control, insure, maintain, repair, restore and otherwise deal with all and every part of the Property and conduct the business thereon; (ii) complete any construction on the Property in such manner and form as the Lender deems advisable; (iii) make alterations, additions, renewals, replacements and improvements to or on the Property; and (iv) exercise all rights and powers of Mortgagor with respect to the Property, whether in the name of Mortgagor or otherwise, including, without limitation, the right to make, cancel, enforce or modify leases, obtain and evict tenants, and demand, sue for, collect and receive all rents of the Property and every part thereof. Any rents collected by Lender or the receiver shall be applied first to payment of the costs of management of the Property and collection of rents, including, but not limited to, receiver's fees, premiums on receiver's bonds and reasonable attorneys' fees of Lender in enforcement and collection of the indebtedness due under the Note and preservation of the collateral security for the Loan, and then to the sums secured by this Mortgage. All such expenses, including receiver's fees and attorneys' fees and costs (at the pre-trial, trial and appellate levels), incurred pursuant to the powers herein contained shall be deemed indebtedness evidenced by the Note and secured by this Mortgage as set forth in Paragraph 15 hereof.

e. Without any obligation to do so and without notice to or demand on Mortgagor and without releasing Mortgagor from any obligation hereunder, make any payment or do any act required of Mortgagor hereunder in such manner and to such extent as Lender may deem necessary to protect the security hereof.

f. pursue such other remedies as Lender may have under the Note, this Mortgage, any other Loan Documents or applicable law.

20. Fees and Expenses. Mortgagor shall pay any and all costs, expenses and attorneys' fees incurred by Lender (regardless of whether in connection with any action, proceeding or appeal) to sustain the lien of this Mortgage or its priority, to protect or enforce any of Lender's rights under this Mortgage or the Note, or to recover any indebtedness secured hereby. Mortgagor shall also pay for any documentary stamp tax, intangible tax and other costs due in connection herewith.

21. Representations and Warranties. In order to induce Lender to make the Loan, Mortgagor represents and warrants that: (a) Mortgagor is lawfully seized of the Property as a good and marketable, insurable and indefeasible estate in fee simple and has good and lawful right and full power to sell and convey and encumber the same; (b) the Property is free and clear of all encumbrances except for taxes and assessments for the current year which are not yet due and payable; (c) this Mortgage creates a valid, first priority lien on the Property; (d) there are no actions, suits or proceedings pending or threatened against or affecting Mortgagor or the Property, at law or in equity, which materially affect the performance by Mortgagor of its obligations under this Mortgage or the Note or which may result in any material adverse change in the business, properties or assets or in the condition, financial or otherwise, of the Mortgagor or the Property; (e) Mortgagor is duly formed and validly existing legal entity in good standing under the laws of the state of its formation and at all times during the term hereof it shall remain validly existing and in good standing under the such laws and shall not take any action or fail to take any action that will result in its dissolution; (f) Mortgagor has taken all necessary legal and, where applicable, company action required to authorize the execution, delivery and performance of the Note and this Mortgage; (g) the Loan Documents and the performance of the obligations of Mortgagor thereunder will not violate any provision of law or the governing documents of Mortgagor or result in the breach or constitute a default under any indenture or other agreement or instrument to which the Mortgagor or the Property is bound; and (h) the Note and this Mortgage constitute valid and binding obligations of Mortgagor, enforceable against Mortgagor in accordance with their respective terms.

22. Further Instruments. Mortgagor shall execute and deliver to Lender, from time to time and on demand, any further instruments (and pay the costs of preparation and recording thereof), including but not limited to mortgages, security agreements, financing statements, assignments and renewal and substitution notes, so as to reaffirm, to correct and to perfect the evidence of the obligations secured hereby and the security interest of Lender in all the property intended to be mortgaged hereby, whether now mortgaged, later substituted for other collateral, or acquired subsequent to the date of this Mortgage.

23. Indemnity. In the event Lender shall be named as a party to any lawsuit brought at any time against Mortgagor or with respect to the Property or this Mortgage or the Loan, then, regardless of the merits of such lawsuit, Mortgagor shall defend Lender and indemnify and hold Lender fully harmless from any and all claims, demands, damages, liabilities, judgments, losses, costs, expenses and attorney's fees arising out of or resulting from any such lawsuit or any appeal in connection therewith.

24. Notices. All notices and other communications hereunder shall be in writing and shall be deemed given if delivered personally, by facsimile transmission, by overnight express mail service or mailed by certified mail (return receipt requested), postage prepaid, to the parties at the addresses set forth herein (or at such other address for a party as shall be specified by like notice; provided that notices of a change of address shall be effective only upon receipt thereof).

25. **Severability.** If any provision or any portion of any provision of this Mortgage, or the application of any provision or any portion thereof to any person or circumstance, shall be held invalid or unenforceable, the remaining portion of such provision and remaining provisions of this Mortgage, or the application of such provision or portion of such provision as is held invalid or unenforceable to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby.

26. **Time.** Time is of the essence relative to the performance of the terms of this Mortgage.

27. **Failure to Insist Upon Strict Performance.** The failure of the Lender to insist upon or enforce any of their rights under this Mortgage shall not constitute a waiver thereof. Lender may waive the benefit of any provision or condition for its benefit which is contained in this Mortgage.

28. **Entire Agreement.** This Mortgage, together with the loan documents referenced and incorporated herein, including but not limited to the Note and any guaranties given in connection herewith, and the applicable terms and provisions of the real estate purchase contract relative to financing that survive the closing on the purchase, constitute the entire agreement and understanding between the parties with respect to the subject matter hereof and there are no other agreements, representations or warranties other than as set forth herein. This Mortgage may not be changed, altered or modified except by an instrument in writing signed by the party against whom enforcement of such change would be sought. This Mortgage shall be binding upon the parties hereto and their respective successors and permitted assigns.

29. **Governing Law.** This Mortgage shall be interpreted, governed by, and construed and enforced in accordance with the laws of the State of Florida. Venue for any legal proceeding between the parties shall lie in **Miami-Dade County, Florida.** In the event that any provision or clause of this Mortgage or the Note conflicts with applicable law, such conflict shall not affect other provisions of this Mortgage or the Note which can be given effect without the conflicting provision. To this end the provisions of this Mortgage or the Note are declared to be severable.

30. **Attorneys' Fees.** In the event the Lender is required to take action to collect or enforce this Mortgage, the Note or any other Loan Document, or if the Lender becomes a party either as Plaintiff or a defendant in any lawsuit or legal or administrative proceeding in relation to the Property or the lien created by this Mortgage, Mortgagor shall be responsible for and shall indemnify and hold Lender harmless for Lender's attorneys' fees and costs in connection therewith, whether or not suit be brought, and whether incurred in connection with collection, pre-trial, trial, appeal, bankruptcy or otherwise. Such entitlement to attorneys' fees shall not merge with the entry of final judgment and shall continue post-judgment for purposes of execution and deficiency until the indebtedness due Lender is fully satisfied. Notwithstanding the existence of §57.105, Fla.Stat., or any statute of a like or similar nature, Mortgagor hereby waives any right to attorneys' fees and agrees that Lender exclusively shall be entitled to indemnification and recovery of any and all attorneys' fees in respect of any collection, enforcement or litigation based hereon, or arising out of, or related hereto, whether, under or in connection with this Mortgage or the Loan Documents or an course of conduct, course of dealing, statements or actions of any party.

31. **Waiver of Jury Trial.** MORTGAGOR HEREBY KNOWINGLY, VOLUNTARILY, AND INTENTIONALLY WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED HEREON, OR ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS MORTGAGE, THE NOTE OR ANY OTHER LOAN DOCUMENTS EXECUTED AND DELIVERED OR CONTEMPLATED TO BE EXECUTED AND DELIVERED IN CONNECTION HERewith, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER ORAL OR WRITTEN) OR ACTIONS OF ANY PARTY RELATING HERETO OR THERETO. THIS PROVISION IS A MATERIAL INDUCEMENT FOR LENDER TO GRANT THE LOAN TO MORTGAGOR. MORTGAGOR ACKNOWLEDGES THAT IT HAS BEEN GIVEN THE OPPORTUNITY TO SEEK LEGAL COUNSEL TO REPRESENT IT IN CONNECTION WITH THIS MORTGAGE.

IN WITNESS WHEREOF, the Mortgagor has caused this Mortgage to be executed as of the date first above written.

Witnesses:

Worldwide Subsidy Group, LLC

Ramona McPherson
Name: RAMONA MCPHERSON

By: Denise Vernon
Denise Vernon - Sole Manager

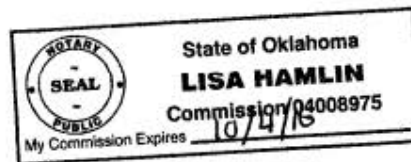
Lisa Hamlin
Name: Lisa Hamlin

STATE OF OKLAHOMA)
COUNTY OF GRADY)

THE FOREGOING INSTRUMENT was acknowledged before me this 17th day of June, 2014 by DENISE VERNON, as Manager of WORLDWIDE SUBSIDY GROUP, LLC, a Texas limited liability company, on behalf of the company. She is personally known to me or has produced a Texas Driver's License as identification.

My commission expires: 10/4/16

Lisa Hamlin
Notary Public - State of Oklahoma 040089
Name: Lisa Hamlin



PAGE 11

Exhibit 5



THIS INSTRUMENT PREPARED BY
AND TO BE RETURNED TO:

Ana Cosculluela, Esq.
The Jacobs Law Group
20700 West Dixie Highway
Aventura, FL 33180

CFN 2016R0388111
OR BK 30138 Pg 4675 (1Pgs)
RECORDED 07/06/2016 09:15:51
HARVEY RUVIN, CLERK OF COURT
MIAMI-DADE COUNTY, FLORIDA

SATISFACTION OF MORTGAGE

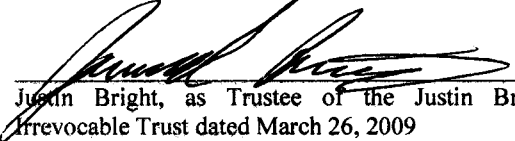
The undersigned, Justin Bright, as Trustee of the Justin Bright Irrevocable Trust dated March 26, 2009 ("Lender"), the owner and holder of a certain Mortgage, Assignment of Leases Rents and Profits and Security Agreement, dated June 18, 2014, executed by Worldwide Subsidy Group, LLC, a Texas limited liability company, in favor of Lender, recorded in Official Records Book 29208, Page 0890, of the Public Records of Miami-Dade County, Florida (the "Mortgage") encumbering the following described real property (the "Property"):

Unit No. 6A, HELEN MAR CONDOMINIUM, according to the Declaration of Condominium thereof, as recorded in Official Records Book 13459, Page 2570, of the Public Records of Miami-Dade County, Florida.

Property Address: 2421 Lake Pancoast Drive, Unit 6A, Miami Beach FL 33140

which Mortgage secures that certain Promissory Note in the original principal amount of \$220,000.00, hereby acknowledges full payment and satisfaction of the Promissory Note and the Mortgage, and hereby surrenders the same as cancelled and directs the clerk of the court to cancel the same of record.

Dated January 29, 2016

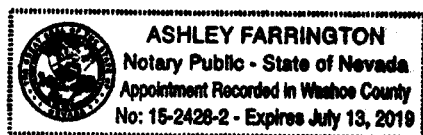

Justin Bright, as Trustee of the Justin Bright
Irrevocable Trust dated March 26, 2009

STATE OF NEVADA)
COUNTY OF Washoe)

The foregoing instrument was acknowledged before me this 29 day of January, 2016, by Justin Bright, as Trustee of the Justin Bright Irrevocable Trust dated March 26, 2009, on behalf of the Trust. He ☐ is personally known to me, or ☒ has produced Nevada Driver License as identification.

My commission expires: July 13, 2019

[Seal]



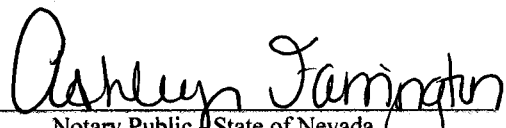

Notary Public, State of Nevada
Name: Ashley Farrington

Exhibit 6

Prepared by and return to:
Eric J Grabois, Esq.
Attorney at Law
Eric J. Grabois, P.L.
1666 79th Street Causeway, Suite 500
North Bay Village, FL 33141
305-891-2029

[Space Above This Line For Recording Data]

CERTIFIED MEMBER RESOLUTION
AND INCUMBENCY CERTIFICATE OF WORLDWIDE SUBSIDY GROUP, LLC

I, Ruth Galaz, as authorized member of WORLDWIDE SUBSIDY GROUP, LLC, a Texas limited liability company, (hereinafter "Company") organized and existing under the laws of the State of Texas, do hereby certify that said company is a valid limited liability company in good standing, and further certify that upon authorized action by the authorized members under the Articles of Organization and subsequent Amendment to Articles of Organization filed December 9, 2016, the following is a true and correct copy of a Resolution adopted by the Company, in accordance with the Articles of Organization, to wit:

WHEREAS, the Company consents to the conveyance of the following property to RTG, LLC, a Florida limited liability company, and it is in the best interest of the Company to convey the property located at 2421 Lake Pancoast Drive, Unit 6A, Miami Beach, FL 33140, described as follows("Property"):

Unit 6A, Helen Mar Condominium, according to the Declaration of Condominium thereof, as recorded in Official Records Book 13459, Page 2570, of the Public Records of Miami-Dade County, Florida.

NOW, BE IT FURTHER RESOLVED THAT: That Ruth Galaz, as authorized member of WORLDWIDE SUBSIDY GROUP, LLC, a Texas limited liability company, is authorized and directed, to execute and deliver any and all necessary documents in connection with the conveyance of real properties described above or any other property owned by the Company, on behalf of the Company, including but not limited to Quit Claim Deeds, or any such other and any and all other documents deemed proper and necessary to carry into effect this Resolution.

I FURTHER CERTIFY that the above Resolution was duly and regularly enacted by Ruth Galaz, as authorized member of WORLDWIDE SUBSIDY GROUP, LLC, a Texas limited liability company, in accordance with the Articles of Organization and subsequent Amendment to Articles of Organization filed December 9, 2016 of the company; that no dissolution, bankruptcy or insolvency proceeding with respect to the Company or any of its members have been commenced; that the Articles of Organization for the Company, are in full force and effect as of the date of this Resolution, without modification except for that Amendment filed on December 9, 2016; that and Ruth Galaz, as authorized member of WORLDWIDE SUBSIDY GROUP, LLC, a Texas limited liability company, has full power and authority to bind the Company; that the foregoing Resolutions are outstanding and in full force and effect and has not been altered, modified or rescinded or countermanded as of the date hereof.

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, we have affixed our hand and seal this 27 day of Jan, 2017.

WITNESSES:

[Signature]

Print Name: James Klinek

WORLDWIDE SUBSIDY GROUP, LLC,
a Texas limited liability company,

[Signature]

Print Name: Richard L. Schoff

[Signature]
By: Ruth Galaz, Authorized Member

STATE OF TEXAS
COUNTY OF Brewer

The foregoing instrument was acknowledged before me this 27 day of January, 2017 by Ruth Galaz, Authorized Member of WORLDWIDE SUBSIDY GROUP, LLC, a Texas limited liability company, who is

☐ personally known to me
☒ who produced Texas Driver License as identification and who acknowledged to and before me that he executed the same freely and voluntarily for the purposes therein expressed, for and on behalf of said company.

My commission expires: Nov 12, 2018

[Signature]
Signature

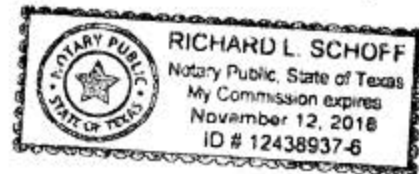


Exhibit 7

Prepared by and return to:

Eric J. Grabois, Esq.
Eric J. Grabois, P.L.
1666 79th Street Cswy., Ste. 500
North Bay Village, FL 33141
305-891-2029
File Number:
Will Call No.:

_____[Space Above This Line For Recording Data]_____

****THIS IS THE CONVEYANCE OF UNENCUMBERED REAL PROPERTY CURRENTLY VALUED AT \$362,066.00. ACCORDINGLY, DOCUMENTARY STAMP TAXES IN THE AMOUNT OF \$2,172.40 ARE BEING PAID.****

Quit Claim Deed

This Quit Claim Deed made this 21 day of January, 2017 between **Worldwide Subsidy Group, LLC, a Texas limited liability company** whose post office address is **132 Perry Ct., San Antonio, Texas 78209**, grantor, and **RTG, LLC, a Florida limited liability company**, whose post office address is **2421 Lake Pancoast Dr., Unit 6A, Miami Beach, FL 33140**, grantee:

(Whenever used herein the terms "grantor" and "grantee" include all the parties to this instrument and the heirs, legal representatives, and assigns of individuals, and the successors and assigns of corporations, trusts and trustees)

Witnesseth, that said grantor, for and in consideration of the sum TEN AND NO/100 DOLLARS (\$10.00) and other good and valuable consideration to said grantor in hand paid by said grantee, the receipt whereof is hereby acknowledged, does hereby remise, release, and quitclaim to the said grantee, and grantee's heirs and assigns forever, all the right, title, interest, claim and demand which grantor has in and to the following described land, situate, lying and being in **Miami-Dade County, Florida** to-wit:

Unit 6A, Helen Mar Condominium, according to the Declaration of Condominium thereof, as recorded in Official Records Book 13459, Page 2570, of the Public Records of Miami-Dade County, Florida.

Property Address: 2421 Lake Pancoast Drive, Unit 6A, Miami Beach, FL 33140

Parcel Identification Number: 0232270240060

To Have and to Hold, the same together with all and singular the appurtenances thereto belonging or in anywise appertaining, and all the estate, right, title, interest, lien, equity and claim whatsoever of grantors, either in law or equity, for the use, benefit and profit of the said grantee forever.

In Witness Whereof, grantor has hereunto set grantor's hand and seal the day and year first above written.

Signed, sealed and delivered in our presence:

Worldwide Subsidy Group, LLC,
a Texas limited liability company

[Signature]
Witness Name: James Klimer

By: [Signature]
Ruth Galaz, Authorized Member

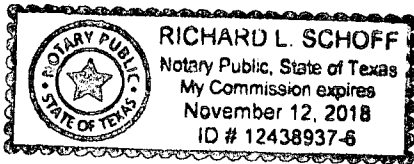
[Signature]
Witness Name: Richard L. Schoff

State of Texas
County of Bexar

The foregoing instrument was acknowledged before me this 27 day of January, 2017 by Ruth Galaz, Authorized Member of Worldwide Subsidy Group, LLC, a Texas limited liability company. She ☐ is personally known or ☒ has produced a driver's license as identification.

[Notary Seal]

[Signature]
Notary Public



Printed Name: RICHARD L. SCHOFF

My Commission Expires: Nov 12, 2018

The Helen Mar Condominium Association, Inc.
 2421-2445 Lake Pancoast Drive
 Miami Beach, Florida 33140

CERTIFICATE OF APPROVAL

THIS IS CERTIFY THAT RTG, LLC has been approved by The Helen Mar Condominium Association, Inc. as the buyer(s) of the following described property in Dade County:

CONDOMINIUM UNIT NO: Unit 6A of The Helen Mar Condominium according to the Declaration of Condominium thereof. Recorded in Official Records Book 13459 at page 2570 of the Public Records of Dade County, Florida.

Such approval has been given pursuant to the provisions of the Declaration of Condominium of The Helen Mar Condominium and the right of first refusal has been duly released or waived by the Association and its members and as a result the right of first refusal of the Association has terminated.

ASSESSMENT CERTIFICATION

The Association does hereby certify that all assessments, charges and penalties including interest levied against Condominium Unit No. 6A are paid in full through January 31, 2017.

Dated this day, January 30, 2017

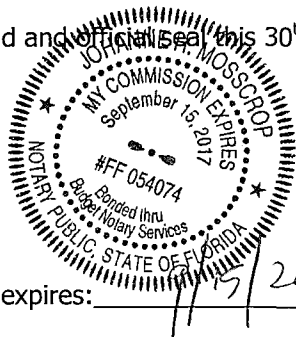
The Helen Mar Condominium Association, Inc.

By: Saul Gross, Asst Sec
 Saul Gross
 Title: Assistant Secretary

The monthly maintenance assessment for the above unit is \$594.34.

STATE OF FLORIDA COUNTY OF DADE Before me appeared Saul Gross, personally known to me, or who produced the following identification _____, and known to me to be the individual described in and who executed the foregoing instrument as Assistant Secretary of the above named corporation, and has acknowledged before me that said instrument is the free act and deed of said corporation and that the seal affixed thereto by due and regular corporate authority.

Witness my hand and official seal this 30th day of January, 2017



Notary Public

Johanne H. Moscrop
 JOHANNE H. MOSCROP

My commission expires: _____

1/30/2017

Exhibit 8

PROPERTY RECORD CARD

Generated Date: 03/11/2020

2019 Current

OFFICE OF THE PROPERTY APPRAISER

Roll Year: 2019

DOR CODE: 0802 MULTIFAMILY 2-9 UNITS : 2 LIVING UNITS STATUS: ACTIVE EFLG:

** Note: values are subject to change due to tax roll corrections **

| CURRENT OWNER AND MAILING: | LEGAL DESCRIPTION: | ACCOUNT FLAGS: | VALUE |
|----------------------------|--------------------------|------------------------|-------|
| RTG LLC | SURPRISE LAKE SUB | # CAT TYPE DESCRIPTION | |
| | PB 9-114 | | |
| 2421 LAKE PANCOAST DR 6A | LOT 17 LESS N8.7FT BLK G | | |
| MIAMI BEACH FL 33140 | LOT SIZE 56.300 X 126 | | |
| | COC 25004-2243 10 2006 1 | | |

| | | | |
|--------------|------------------|--------------------|------------------------------|
| MCD: | 0200 Miami Beach | ZONING 1: | 0100 SINGLE FAMILY - GENERAL |
| CTCASE: | N | % CAP: | 0.00 |
| HEX BASE YR: | 0 | DISTRICT: | 1 |
| AG: | N | GPOR: | 0 |
| | | NON-HEX BASE YR: | 2018 |
| | | EEL/CONS COVENANT: | N NH CD: 50.00 NAUTILUS |

| | | | | | | | |
|---------------------------------|---------|----------------|-------|------------|------|----------------|----------|
| ADDITIONAL PROPERTY INFORMATION | | | | | | | |
| LOT SIZE: | 7,094 S | BUILDING AREA: | 4,579 | L/B RATIO: | 1.55 | POOL: | N |
| BUILDINGS: | 1 | YEAR BLT: | 1930 | EFF AGE: | 1930 | AVG UNIT SIZE: | 2,289.00 |
| BDRM: | 4 | BATH: | 4 | 1/2 BTH: | 0 | UNITS: | 2 |
| 1BD: | 0 | 2BD: | 0 | 3BD: | 0 | EFF: | 0 |
| | | | | | | 4BD: | 0 |

| | | | | | |
|-----------------------|---------|---------|---------|--------------------|-------------|
| VALUE HISTORY: | 2017 | 2018 | 2019 | \$ UNIT OF MEASURE | \$ PER UNIT |
| LAND VALUE | 652,616 | 567,737 | 532,183 | 75.02 | |
| BUILDING VALUE | 344,547 | 155,663 | 155,663 | 33.99 | |
| MARKET VALUE | 997,163 | 723,400 | 687,846 | 150.22 | 343,923.00 |
| ASSESSED VALUE | 835,984 | 723,400 | 687,846 | | |
| TOTAL EXEMPTION VALUE | 0 | 0 | 0 | | |

| | | | | | | | | | |
|--------------|-----------|------------|-----|-------------|--------|--------|------|------------------------------|---------------------|
| SALE HISTORY | | | | | | | | | |
| # | AMOUNT | DATE | I/V | SALE TYPE | SALECD | ORBOOK | ORPG | GRANTOR | GRANTEE |
| 05 | 900,000 | 06/13/2017 | I | Qualified | 01 | 30587 | 4524 | ERIC LEWENHAUPT MIX | RTG LLC |
| 01 | 0 | 04/04/2014 | I | Unqualified | 11 | 29110 | 2710 | EUGENIA DE LEWENHAUPT EST OF | ERIC LEWENHAUPT MIX |
| 02 | 600,000 | 07/29/2010 | I | Qualified | 01 | 27382 | 1303 | ARON LAMPERT | EUGENIA LEWENHAUPT |
| 03 | 1,200,000 | 10/01/2006 | I | Qualified | 00 | 25004 | 2243 | | |
| 04 | 0 | 06/01/2006 | V | Unqualified | 01 | 24587 | 1088 | | |

| | | | |
|----------------------------|-------------------------------------|-----------------------------|--|
| PREVIOUS OWNER INFORMATION | | | |
| 01 GENIA DE LEWENHAUPT F D | 02 COUNTESS GENIA DE LEWENHAUPT TRS | 03 COC 24587-1088 06 2006 5 | |

| | | | |
|-------------|------|------|------|
| EXEMPTIONS: | 2017 | 2018 | 2019 |
|-------------|------|------|------|

LAND RECORD CARD

Generated Date: 03/11/2020

2019 Current

OFFICE OF THE PROPERTY APPRAISER

Roll Year: 2019

DOR CODE: 0802 MULTIFAMILY 2-9 UNITS : 2 LIVING UNITS STATUS: ACTIVE EFLG:

** Note: values are subject to change due to tax roll corrections **

| | | | | | | | | | | | |
|---------------|---------|---------------|------|--|--|--|--|--|--|--|--|
| ----- | | | | | | | | | | | |
| TOT LOT SIZE: | 7,094 S | USE CODE: | 0802 | ZONING 1: 0100 SINGLE FAMILY - GENERAL | | | | | | | |
| MKT LND VAL: | 532,183 | OVERALL RATE: | 0.00 | ZONING 2: 0000 | | | | | | | |
| AG MKT VAL: | 0 | AG VALUE: | 0 | AG DIFF: 0 | | | | | | | |
| ZNG ORDN: | | LND CHG: | | LND CHG DATE: | | | | | | | |

| | | | | | | | | | | | |
|------------------|------|-----|-------|--------|--------|-------|-------|----------|----------|---------|----------|
| MARKET LAND | | | | | | | | | | | |
| CODE DESCRIPTION | ZONE | TYP | FF | DEPTH | DFAC | %COND | UNITS | UNITPRC | ADJUPRC | VALUE | OVERRVAL |
| 00 GENERAL | 0100 | F | 56.30 | 126.00 | 1.0024 | 1.00 | 56.30 | 9,430.00 | 9,452.63 | 532,183 | |
| INF CODE REASON | | | | | | | | | | | |
| 0 | | | | | | | | | | | |

CLASSIFIED AG

MARKET AG

BUILDING RECORD CARD

Generated Date: 03/11/2020

2019 Current OFFICE OF THE PROPERTY APPRAISER

Roll Year: 2019

DOR CODE: 0802 MULTIFAMILY 2-9 UNITS : 2 LIVING UNITS STATUS: ACTIVE EFLG:

** Note: values are subject to change due to tax roll corrections **

BUILDING INFORMATION

| BLDG# | SEGID | ACTYR | EFFAGE | TYPE | DT | CLASS | GRADE | BASEPRICE | TOTADJPTS | ADJBASEPRC | ADJAREA | REPCOSTNEW |
|-------|-------|-------|--------|-------|-----------|-------------|------------|-----------|-----------|--------------------|---------|------------|
| 1 | 1 | 1930 | 1930 | 0001 | 01 | D | -2 | 125.00 | 100 | 125.00 | 4,579 | 572,375 |
| FUNC | ECON | PHYS | %GOOD | ITEMS | DEPRVALUE | OVERRRVALUE | TOTALVALUE | ADJ.AREA | STYLE | DESCRIPTION | | |
| 55.00 | 0.00 | 0.00 | 27.00 | 0.00 | 154,541 | | 0 | 4,579 | 02 | Duplex Residential | | |

BEDROOMS: 4 BATHROOMS: 4 HALF-BATHS: 0 FLOORS: 2 UNITS: 2

SUBAREA INFORMATION

| DESCRIPTION | YEAR ON | ACTUAL AR | ADJ AREA | DEPR VAL |
|-------------|---------|-----------|----------|----------|
| Two Story | 1930 | 5,088 | 4,579 | 154,541 |

STRUCTURAL ELEMENTS INFORMATION

| CATEGORY | POINTS |
|-------------------|--------|
| Exterior Wall | 31.00 |
| Electrical | 5.00 |
| Plumbing | 11.00 |
| Interior Walls | 30.00 |
| Interior Flooring | 9.00 |
| Roofing Structure | 8.00 |
| Roofing Cover | 6.00 |
| TOTAL | 100.00 |

EXTRA FEATURES INFORMATION

| XFCD DESCRIPTION | SEG | UNITS | UNITPRC | ACYR | EFYR | DT | NOTES | OR% | %GD | DEPRECV | OVERRRVAL |
|-------------------------------------|-----|---------|---------|------|------|----|-------|-----|-----|---------|-----------|
| 0034 Chain-link Fence 4-5 ft high | 1 | 204 | 10.00 | 1969 | 1969 | 02 | | 1 | 1 | 1,122 | |
| TOTAL XF VALUE BLDG 1: | | 1,122 | | | | | | | | | |
| TOTAL SEG ADJ VALUE BLDG 1: | | 154,541 | | | | | | | | | |
| TOTAL XF ADJ VALUE BLDG 1: | | 1,122 | | | | | | | | | |
| TOTAL SEG AND XF ADJ VALUE BLDG 1: | | 155,663 | | | | | | | | | |
| TOTAL SEG AND XF SITE VALUE BLDG 1: | | 155,663 | | | | | | | | | |

| | | |
|--|---|---------|
| TOTAL ADJ VALUE OF ALL BUILDINGS AND XF | : | 155,663 |
| TOTAL AREA (ADJ SQ FT) OF ALL BUILDINGS | : | 4,579 |
| TOTAL SITE VALUE OF ALL BUILDINGS AND XF | : | 0 |
| TOTAL IMPROVEMENT VALUE | : | 155,663 |

Exhibit 9

Prepared by and return to:

Maria Fernandez-Valle

Attorney at Law

Maria Fernandez Valle P.A.

2301 N.W. 87 Ave. Suite 501

Doral, FL 33172

305-597-9977

File Number: 147-17

Will Call No.:

Parcel Identification No. 02-3222-018-1150

[Space Above This Line For Recording Data]

Warranty Deed

(STATUTORY FORM - SECTION 689.02, F.S.)

This Indenture made this 13 day of June, 2017 between **Laura Lewenhaupt** also known as **Laura Christina Genia Blanka Lewenhaupt**, a single woman and **Eric Lewenhaupt Mix** also known as **Eric James Lewenhaupt Mix**, a single man, whose post office address is 506 71st Street, Saint Pete Beach, FL 33706 of the County of Pinellas, State of Florida, grantor*, and **RTG, LLC**, a Florida Limited Liability Company whose post office address is 2421 Lake Pancoast Drive, Suite 6A, Miami Beach, FL 33140 of the County of Miami-Dade, State of Florida, grantee*,

Witnesseth that said grantor, for and in consideration of the sum of TEN AND NO/100 DOLLARS (\$10.00) and other good and valuable considerations to said grantor in hand paid by said grantee, the receipt whereof is hereby acknowledged, has granted, bargained, and sold to the said grantee, and grantee's heirs and assigns forever, the following described land, situate, lying and being in **Miami-Dade County, Florida**, to-wit:

Lot 17, less the North 8.7 feet thereof, of Block G, Surprise Lake Subdivision, according to the Map or Plat thereof, as recorded in Plat Book 9, Page 114, of the Public Records of Miami-Dade County, Florida.

Subject to taxes for 2017 and subsequent years; covenants, conditions, restrictions, easements, reservations and limitations of record, if any, but this reference shall not act to reimpose same.

and said grantor does hereby fully warrant the title to said land, and will defend the same against lawful claims of all persons whomsoever.

* "Grantor" and "Grantee" are used for singular or plural, as context requires.

In Witness Whereof, grantor has hereunto set grantor's hand and seal the day and year first above written.

Signed, sealed and delivered in our presence:

Tami Hahn
 Witness Name: Tami Hahn

A. Holden
 Witness Name: A. Holden

Tami Hahn
 Witness Name: Tami Hahn

A. Holden
 Witness Name: A. Holden

L. Lewenhaupt (Seal)
 Laura Lewenhaupt

E. Lewenhaupt (Seal)
 Eric Lewenhaupt Mix

State of Florida
 County of Miami-Dade

The foregoing instrument was acknowledged before me this 13 day of June, 2017 by Laura Lewenhaupt, who ☒ are personally known or ☐ have produced a driver's license as identification.

[Notary Seal]



A. Holden
 Notary Public

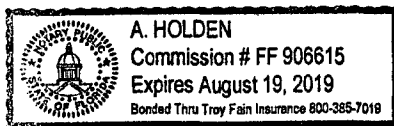
Printed Name: A. Holden

My Commission Expires: 8/19/19

State of Florida
 County of Miami-Dade

The foregoing instrument was acknowledged before me this 13 day of June, 2017 by Eric Lewenhaupt Mix, who ☒ are personally known or ☐ have produced a driver's license as identification.

[Notary Seal]



A. Holden
 Notary Public

Printed Name: A. Holden

My Commission Expires: 8/19/19

Exhibit 10

NOTICE OF COMMENCEMENT

A RECORDED COPY MUST BE POSTED ON THE JOB SITE AT TIME OF FIRST INSPECTION

PERMIT NO. BR1701397 TAX FOLIO NO. 02-3222-018-1150

STATE OF FLORIDA:
COUNTY OF MIAMI-DADE:

THE UNDERSIGNED hereby gives notice that improvements will be made to certain real property, and in accordance with Chapter 713, Florida Statutes, the following information is provided in this Notice of Commencement.

1. Legal description of property and street/address: SURPRISE LAKE SUB PB 9-114;
4531 PRAIRIE AVE., Miami Beach, FL 33140-3004

2. Description of improvement: Demo per plans

3. Owner(s) name and address: RTG, LLC
2421 LAKE PANCOAST DR 6A, MIAMI BEACH, FL 33140

Interest in property: _____

Name and address of fee simple titleholder: _____

4. Contractor's name and address: SHEAR CONSTRUCTION & MGMT. LLC
6817 SW 81 TERRACE, MIAMI, FL. 33143

5. Surety: (Payment bond required by owner from contractor, if any)

Name and address: _____

Amount of bond \$ _____

6. Lender's name and address: _____

7. Persons within the state of Florida designated by Owner upon whom notices or other documents may be served as provided by Section 713.13(1)(a)7., Florida Statutes,

Name and address: _____

8. In addition to himself, Owners designates the following person(s) to receive a copy of the Lienor's Notice as provided in Section 713.13(1)(b), Florida Statutes

Name and address: _____

9. Expiration date of this Notice of Commencement: (the expiration date is 1 year from the date of recording unless a different date is specified) _____

Signature of Owner: _____

Print Owner's Name RAUL GALAZ - AUTHORIZED MEMBER

Sworn to and subscribed before me this 15 day of August, 2017.

Notary Public _____

Print Notary's Name _____

My Commission expires _____



Lory Mendez
Commission #FF975182
Expires: March 24, 2020
Bonded thru Aaron Notary

This Instrument prepared by _____

Name: R. Traino

Address: 6817 SW 81 Ter.,

Miami, FL 33143

Exhibit 11

NOTICE OF COMMENCEMENT

A RECORDED COPY MUST BE POSTED ON THE JOB SITE AT TIME OF FIRST INSPECTION

PERMIT NO. BR1701610 TAX FOLIO NO. 02-3222-018-1150

STATE OF FLORIDA:
COUNTY OF MIAMI-DADE:

THE UNDERSIGNED hereby gives notice that improvements will be made to certain real property, and in accordance with Chapter 713, Florida Statutes, the following information is provided in this Notice of Commencement.

1. Legal description of property and street/address: SURPRISE LAKE SUB PB 9-114;
4531 PRAIRIE AVE., Miami Beach, FL 33140-3004

2. Description of improvement: Mechanical, electrical, plumbing and drywall work.

3. Owner(s) name and address: RTG, LLC
2421 LAKE PANCOAST DR 6A, MIAMI BEACH, FL 33140

Interest in property: _____
Name and address of fee simple titleholder: _____

4. Contractor's name and address: SHEAR CONSTRUCTION & MGMT. LLC
6817 SW 81 TERRACE, MIAMI, FL. 33143

5. Surety: (Payment bond required by owner from contractor, if any)

Name and address: _____

Amount of bond \$ _____

6. Lender's name and address: _____

7. Persons within the state of Florida designated by Owner upon whom notices or other documents may be served as provided by Section 713.13(1)(a)7., Florida Statutes,

Name and address: _____

8. In addition to himself, Owners designates the following person(s) to receive a copy of the Lienor's Notice as provided in Section 713.13(1)(b), Florida Statutes

Name and address: _____

9. Expiration date of this Notice of Commencement: (the expiration date is 1 year from the date of recording unless a different date is specified) _____

Signature of Owner

Authorized

Print Owner's Name RAUL GALAZ Member

Sworn to and subscribed before me this 15 day of December, 2017.

Notary Public

Print Notary's Name

My Commission expires:

Lory Mendez
3-24-20



Lory Mendez
Commission #FF975182
Expires: March 24, 2020
Bonded thru Aaron Notary

This instrument prepared by

Name: R. Traino

Address: 6817 SW 81 Ter.

Miami, FL 33143

Exhibit 12



DECLARATION OF RESTRICTIVE COVENANT

CFN 20190222316
OR BK 31398 Pg 1962 (1Pgs)
RECORDED 04/10/2019 13:09:33
HARVEY RUVIN, CLERK OF COURT
MIAMI-DADE COUNTY, FLORIDA

KNOWN ALL MEN BY THESE PRESENTS:

WHEREAS, the undersigned
RT6, LLC

hereinafter referred to as the simple fee OWNER(s) of the following described property, commonly known as 4531 Prairie situated and being in the City of Miami Beach, Florida:

Lot 17 Block G of Surprise Lake Subdivision, according to the Plat thereof as recorded in Plat book 9, Page 114, of the Public Records of Miami-Dade County, Florida; and

WHEREAS, the undersigned, has applied to the Public Works Department of the City of Miami Beach for permission to install the following described item(s) within the utility easement area:

DURA-VINYL/METAL FENCE

WHEREAS, in consideration of the approval of this permit and/or plans by the Public Works Department of the City of Miami Beach, the undersigned OWNER(s) agree(s) as follows:

1. To remove, repair and/or replace at Owner's expense, where and when necessary due to a utility cut permit or work in the easement area, the above mentioned item(s).

NOW, THEREFORE, for good and valuable consideration, the undersigned do(es) hereby declare that these conditions shall be deemed a restrictive covenant running with the above mentioned property in favor of the City of Miami Beach, and shall remain in full force and effect and be binding on the undersigned, his/her/their heirs and assigns, until such time as this obligation has been canceled by an affidavit filed in the Public Records of Miami-Dade County, Florida, by the Director of the Public Works Department of the City of Miami Beach (or his authorized designee)

Signed, sealed, executed and acknowledged on 10th day of April, 2019

Signed, sealed and delivered in the presence of:

WITNESSES:

OWNER(S):

Print name: _____

[Signature]
Print name: RAUL GALAZ obo RT6, LLC

Print name: _____

Print name: _____

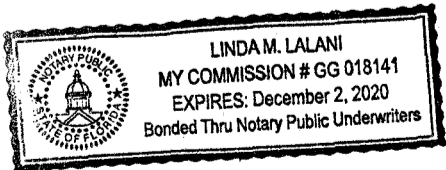
STATE OF FLORIDA)

COUNTY OF MIAMI-DADE)

I HEREBY CERTIFY that on this day personally appeared before me Raul Galaz who is personally known to me, or has produced FLO G 420X420 (type of identification) as identification and he/she acknowledge that he/she executed the foregoing, freely and voluntarily, for purposes therein expressed.

SWORN TO AND SUBSCRIBED before me this 10 day of April, 2019.

My Commission Expires:



NOTARY PUBLIC STATE OF FLORIDA

Print Name: Linda M. Lalani

Commission No.: _____

Exhibit 13



CFN 20190222317
OR BK 31398 Pg 1963 (1Pgs)
RECORDED 04/10/2019 13:09:33
HARVEY RUVIN, CLERK OF COURT
MIAMI-DADE COUNTY, FLORIDA

DECLARATION OF RESTRICTIVE COVENANT

KNOWN ALL MEN BY THESE PRESENTS:

THIS DECLARATION REGARDING CONSTRUCTION AND MAINTENANCE OF

[X] Decorative Brick Paver Driveway Approach [] 4" Artificial Grass Strip (the "Declaration") is made this 10th day of April, 2019, by RTG, LLC, a Florida Corporation (the "Owner") in favor of the City of Miami Beach, Florida, a municipality of the State of Florida (the "City").

WHEREAS, the undersigned RAUL GALAZ, representative of RTG, LLC hereinafter referred to as the simple Owner (s) ("Owner") of the following described property ("Property"), located at 4531 Prairie Ave., City of Miami Beach, Florida: Lot(s) 17 Block G of Surprise Lake Subdivision, according to the Plat thereof as recorded in Plat Book 9, Page 114, of the Public Records of Miami-Dade County, Florida; and

WHEREAS, the City's Public Works Department has required the Owner to install 1 - 4" SCH 40 PVC conduit at each driveway approach at minimum 16 inches to maximum 24 inches in depth extending 1'-0" on each side and capped within the right-of-way adjacent to the Owners property; and

WHEREAS, the undersigned Owner, has applied to the Public Works Department of the City of Miami Beach for permission to install the above described item(s) [X] Decorative Paver Driveway Approach [] 4" Artificial Grass Strip, according to a plan reviewed and approved by the City's Public Works Department; and

WHEREAS, in consideration of the approval of this permit and/or plans by the Public Works Department of the City of Miami Beach, the undersigned Owner(s) agree(s), subject to, among other this the following:

1. To install and maintain the Decorative Brick Paver Driveway Approach within the right-of-way adjacent to the Property
2. To replace, restore and/or repair the Decorative Brick Paver Driveway Approach at Owner's expense, in the event the Public Works Department must issue an underground utility or right-of-way permit for work in that area.
3. Reserve unto the City the Right to remove, add, maintain or have the Owner(s) remove any of the improvements within the right-of-way, at Owner's expense.
4. Add the City of Miami Beach as additional insured on the Certificates of Insurance for Liability and Workmen's Compensation for a coverage in the minimum limits as approved by the City's Risk Manager.

NOW, THEREFORE, for good and valuable consideration, the undersigned do(es) hereby declare that these conditions shall be deemed a restrictive covenant running with the above mentioned property in favor of the City of Miami Beach, and shall remain in full force and effect and be binding on the undersigned, his/her/their heirs and assigns, until such time as this obligation has been canceled by an affidavit filed in the Public Records of Miami-Dade County, Florida, by the Director of the Public Works Department of the City of Miami Beach (or his authorized designee)

Signed, sealed, executed and acknowledged on 10th day of April, 2019

Signed, sealed and delivered in the presence of:

WITNESSES:

OWNER(S):

Print name: _____

Print name: RAUL GALAZ obo RTG, LLC

Print name: _____

Print name: _____

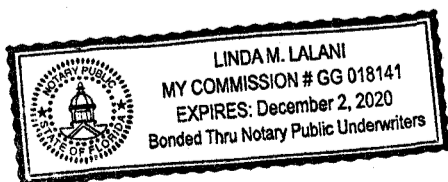
STATE OF FLORIDA)

COUNTY OF MIAMI-DADE)

I HEREBY CERTIFY that on this day personally appeared before me Raul Galaz who is personally known to me, or has produced FLD 6420844-4000 (type of identification) as identification and he/she acknowledge that he/she executed the foregoing, freely and voluntarily, for purposes therein expressed.

SWORN TO AND SUBSCRIBED before me this 10 day of April, 2019.

My Commission Expires:



NOTARY PUBLIC STATE OF FLORIDA

Print Name: Linda M. Lalani

Commission No.: _____

Exhibit 14

NOTICE OF COMMENCEMENT

A RECORDED COPY MUST BE POSTED ON THE JOB SITE AT TIME OF FIRST INSPECTION



CFN 20190260334

OR BK 31419 Pg 2564 (1Pg)

RECORDED 04/29/2019 16:05:32

HARVEY RUVIN, CLERK OF COURT

MIAMI-DADE COUNTY, FLORIDA

PERMIT NO. BC 1910296 TAX FOLIO NO. 02-3222-018-1150

STATE OF FLORIDA:

COUNTY OF MIAMI-DADE:

THE UNDERSIGNED hereby gives notice that improvements will be made to certain real property, and in accordance with Chapter 713, Florida Statutes, the following information is provided in this Notice of Commencement.

Space above reserved for use of recording office

1. Legal description of property and street/address: Surprise Lake Sub - LOT 17 less N87ft Blkg
4531 Prairie Ave, Miami Beach, FL 33140
2. Description of improvement: Aluminum Fence
3. Owner(s) name and address: RTG LLC - 4531 Prairie Ave, Miami Beach, FL 33140
Interest in property: Owner
Name and address of fee simple titleholder: _____
4. Contractor's name, address and phone number: ZU Expedite Services, LLC - 9546628181
4061 SW 97th PL, Miami, FL 33165
5. Surety: (Payment bond required by owner from contractor, if any)
Name, address and phone number: _____
Amount of bond \$ _____
6. Lender's name and address: _____
7. Persons within the State of Florida designated by Owner upon whom notices or other documents may be served as provided by Section 713.13(1)(a)7., Florida Statutes,
Name, address and phone number: ZU Expedite Services, LLC - 9546628181
4061 SW 97th PL, Miami, FL 33165
8. In addition to himself, Owners designates the following person(s) to receive a copy of the Lienor's Notice as provided in Section 713.13(1)(b), Florida Statutes.
Name, address and phone number: ZU Expedite Services, LLC - 9546628181
4061 SW 97th PL, Miami, FL 33165
9. Expiration date of this Notice of Commencement: _____
(the expiration date is 1 year from the date of recording unless a different date is specified)

WARNING TO OWNER: ANY PAYMENTS MADE BY THE OWNER AFTER THE EXPIRATION OF THE NOTICE OF COMMENCEMENT ARE CONSIDERED IMPROPER PAYMENTS UNDER CHAPTER 713, PART I, SECTION 713.13, FLORIDA STATUTES, AND CAN RESULT IN YOUR PAYING TWICE FOR IMPROVEMENTS TO YOUR PROPERTY. A NOTICE OF COMMENCEMENT MUST BE RECORDED AND POSTED ON THE JOB SITE BEFORE THE FIRST INSPECTION. IF YOU INTEND TO OBTAIN FINANCING, CONSULT WITH YOUR LENDER OR AN ATTORNEY BEFORE COMMENCING WORK OR RECORDING YOUR NOTICE OF COMMENCEMENT.

Signature(s) of Owner(s) or Owner(s)' Authorized Officer/Director/Partner/Manager

Prepared By [Signature] obo RTG, LLC

Print Name RAUL GALAZ

Title/Office Representative of RTG, LLC

Prepared By _____

Print Name _____

Title/Office _____

STATE OF FLORIDA

COUNTY OF MIAMI-DADE

The foregoing instrument was acknowledged before me this 18 day of April

By Raul Galaz

☐ Individually, or ☐ as _____ for _____

☐ Personally known, or ☒ produced the following type of identification: 8420-723-62-402-0

Signature of Notary Public: [Signature]

Print Name: Lakeshia L. Crist

(SEAL)

VERIFICATION PURSUANT TO SECTION 92.525, FLORIDA STATUTES

Under penalties of perjury, I declare that I have read the foregoing and that the facts stated in it are true, to the best of my knowledge and belief.

Signature(s) of Owner(s) or Owner(s)' Authorized Officer/Director/Partner/Manager who signed above:

By [Signature] obo RTG, LLC By _____

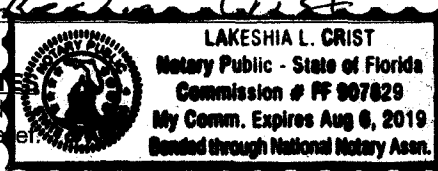


Exhibit 15

NOTICE OF COMMENCEMENT

A RECORDED COPY MUST BE POSTED ON THE JOB SITE AT TIME OF FIRST INSPECTION



CFN 20190290514
OR BK 31437 Pg 1929 (1Pgs)
RECORDED 05/09/2019 15:15:25
HARVEY RUVIN, CLERK OF COURT
MIAMI-DADE COUNTY, FLORIDA

PERMIT NO. BR 1903125 TAX FOLIO NO. 02-3222-018-1150

STATE OF FLORIDA:
COUNTY OF MIAMI-DADE:

THE UNDERSIGNED hereby gives notice that improvements will be made to certain real property, and in accordance with Chapter 713, Florida Statutes, the following information is provided in this Notice of Commencement.

Space above reserved for use of recording office

1. Legal description of property and street/address: 4531 PRAIRIE AVE Miami Beach FL
2. Description of improvement: paver installation.
3. Owner(s) name and address: RTG, LLC - 4531 PRAIRIE AVE Miami Beach FL
Interest in property: Residential - owner
Name and address of fee simple titleholder: _____
4. Contractor's name, address and phone number: ON CALL GPR - 3052820084
18721 SW 350 ST HOMESIDE FL 33034
5. Surety: (Payment bond required by owner from contractor, if any)
Name, address and phone number: _____
Amount of bond \$ _____
6. Lender's name and address: _____
7. Persons within the State of Florida designated by Owner upon whom notices or other documents may be served as provided by Section 713.13(1)(a)7., Florida Statutes,
Name, address and phone number: ON CALL GPR 305282 0084
18721 SW 350 ST HOMESIDE FL 33034
8. In addition to himself, Owners designates the following person(s) to receive a copy of the Lienor's Notice as provided in Section 713.13(1)(b), Florida Statutes.
Name, address and phone number: ON CALL GPR 305282 0084
18721 SW 350 ST HOMESIDE FL 33034
9. Expiration date of this Notice of Commencement: _____
(the expiration date is 1 year from the date of recording unless a different date is specified)

WARNING TO OWNER: ANY PAYMENTS MADE BY THE OWNER AFTER THE EXPIRATION OF THE NOTICE OF COMMENCEMENT ARE CONSIDERED IMPROPER PAYMENTS UNDER CHAPTER 713, PART I, SECTION 713.13, FLORIDA STATUTES, AND CAN RESULT IN YOUR PAYING TWICE FOR IMPROVEMENTS TO YOUR PROPERTY. A NOTICE OF COMMENCEMENT MUST BE RECORDED AND POSTED ON THE JOB SITE BEFORE THE FIRST INSPECTION. IF YOU INTEND TO OBTAIN FINANCING, CONSULT WITH YOUR LENDER OR AN ATTORNEY BEFORE COMMENCING WORK OR RECORDING YOUR NOTICE OF COMMENCEMENT.

Signature(s) of Owner(s) or Owner(s)'s Authorized Officer/Director/Partner/Manager

Prepared By [Signature]
Print Name RAUL GALAZ
Title/Office RTG, LLC representative

Prepared By _____
Print Name _____
Title/Office _____

STATE OF FLORIDA
COUNTY OF MIAMI-DADE

The foregoing instrument was acknowledged before me this 9 day of May, 2019

By Raul Galaz

☐ Individually, or ☒ as Manager Power of Attorney House
☐ Personally known, or ☒ produced the following type of identification:

Signature of Notary Public: _____
Print Name: _____
(SEAL)

[Signature] Linda M. Lalani

VERIFICATION PURSUANT TO SECTION 92.525, FLORIDA STATUTES

Under penalties of perjury, I declare that I have read the foregoing and that the facts stated in it are true, to the best of my knowledge and belief.

Signature(s) of Owner(s) or Owner(s)'s Authorized Officer/Director/Partner/Manager who signed above:

By [Signature] By _____

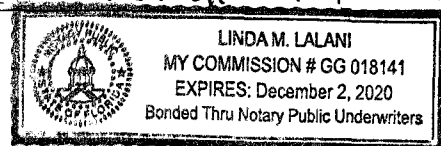


Exhibit 16



This document prepared by and should be returned to:
 Gary Shear
 6817 SW 81 Terrace
 Miami, FL 33143

CFN 20190242281
 DR BK 31409 Ps 4495 (1Pgs)
 RECORDED 04/19/2019 10:44:37
 HARVEY RUVIN, CLERK OF COURT
 MIAMI-DADE COUNTY, FLORIDA

WARNING!

THIS LEGAL DOCUMENT REFLECTS THAT A CONSTRUCTION LIEN HAS BEEN PLACED ON THE REAL PROPERTY LISTED HEREIN. UNLESS THE OWNER OF SUCH PROPERTY TAKES ACTION TO SHORTEN THE TIME PERIOD, THIS LIEN MAY REMAIN VALID FOR ONE YEAR FROM THE DATE OF RECORDING, AND SHALL EXPIRE AND BECOME NULL AND VOID THEREAFTER UNLESS LEGAL PROCEEDINGS HAVE BEEN COMMENCED TO FORECLOSE OR TO DISCHARGE THIS LIEN.

CLAIM OF LIEN

STATE OF FLORIDA
 COUNTY OF: MIAMI-DADE

BEFORE ME, the undersigned authority, personally appeared, GARY SHEAR, who, after being duly sworn, deposes and says that he is the AGENT of the Lienor herein, SHEAR CONSTRUCTION & MGMT., LLC, and that in pursuance of a contract with RTG, LLC., whose address is 2421 LAKE PANCOAST DR. #6A, MIAMI BEACH FLORIDA 33140, the Lienor furnished labor, materials, and/or services consisting of GENERAL CONSTRUCTION work, on the following described real property located in MIAMI DADE County, Florida:

**TAX FOLIO #02-3222-018-1150
 SURPRISE LAKE SUB PB 9-114
 4531 PRAIRIE AVE. MIAMI BEACH. FL. 33140-3004**

Property owned by:
 RTG, LLC.

Said labor, materials, and/or services were of a total value of \$491,199.31 of which there remains unpaid \$124,056.63. The first of said labor, materials, and/or services was furnished on August 1, 2017 and the last of same on January 23, 2019 and that Lienor served its Notice To Owner to the Owner on N/A, and that Lienor served its Notice To Owner to the Contractor, N/A, on and that Lienor served its Notice To Owner to the Subcontractor, N/A, on .

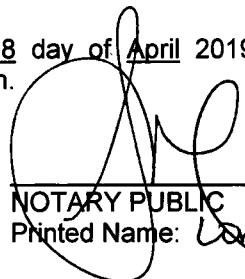
BY: 
 GARY SHEAR, as AGENT for:
 SHEAR CONSTRUCTION & MGMT., LLC
 6817 SW 81 TERRACE, MIAMI, FL 33143

STATE OF FLORIDA – COUNTY OF MIAMI DADE:

AFFIRMED AND SUBSCRIBED BEFORE ME this 18 day of April 2019, by GARY SHEAR, who is personally known to me or produced identification.



Lory Mendez
 Commission #FF875182
 Expires: March 24, 2020
 Bonded thru Aaron Notary


 NOTARY PUBLIC
 Printed Name: Lory Mendez

Sent Via Certified Mail RRR #7012 2920 0000 2200 6793
 RTG, LLC.
 2421 LAKE PANCOAST DR. #6A,
 MIAMI BEACH FLORIDA 33140

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

MAY 27 PM 4:45

UNITED STATES OF AMERICA,
MAYER-WHITTINGTON
CLERK

Plaintiff,

v.

Raul C. GALAZ,

Defendant.

Criminal No: **02-230**

Count 1: 18 U.S.C. § 1341
(Mail Fraud)

MAY 30 2002

KENNEDY, JR. J. HNK

INFORMATION

The defendant having waived in open court prosecution by indictment, the United States Attorney for the District of Columbia charges:

COUNT 1 (Mail Fraud)

At all times relevant to this Information:

Background

1. Defendant Raul C. GALAZ resided in either California or Texas and was an attorney licenced to practice law in the State of California specializing in the field of entertainment law.
2. The United States Copyright Office (hereinafter "Copyright Office") is located in the District of Columbia and is a component of the Library of Congress, a part of the legislative branch of the Government of the United States. The Copyright Office collects copyright royalty payments from cable and satellite companies that retransmit programs to system subscribers and distributes royalty fees to the owners of the copyrighted programs.

- 1 -

SDC-P-003

U.S. District and Bankruptcy Courts
for the District of Columbia

A TRUE COPY

ANGELA D. CAESAR, Clerk

By

Deputy Clerk

3/14/14
Sherry [Signature]
App. 348

3. During July of each calendar year, copyright owners must file claims with the Copyright Office for the prior calendar year which identify the program copyright owner, the program claimed, one cable or satellite system involved in the program's retransmission, and date of retransmission.

4. The Motion Picture Association of America (hereinafter "MPAA") is located in the District of Columbia and is a non-profit trade organization which, on behalf of represented parties, collects copyright royalty payments from the Copyright Office and distributes the funds to copyright owners and/or beneficial interest holders.

5. In or about March 1998, defendant Raul C. GALAZ, as principal founder, started Artist Collections Group, a California limited liability company, created to collect cable and satellite copyright retransmission royalties and other secondary royalty rights throughout the world. Artist Collections Group conducted business under the name Worldwide Subsidy Group.

6. In or about August, 1999, defendant Raul C. GALAZ, as the principal founder, started Worldwide Subsidy Group, a Texas limited liability company created to collect cable and satellite copyright retransmission royalties in the United States. Worldwide Subsidy Group conducted business under the name Independent Producers Group.

The Scheme and Artifice to Defraud

7. Beginning in or about July 1995, and continuing through in or about March 2001, the exact dates being unknown, in the District of Columbia and elsewhere, the defendant,

Raul C. GALAZ,

devised and intended to devise a scheme and artifice to defraud and to obtain money and property from the Copyright Office and the MPAA, by means of materially false and fraudulent pretenses, representations and promises.

Purpose of the Scheme and Artifice

8. It was the purpose of the scheme for defendant Raul C. GALAZ to fraudulently obtain cable and satellite retransmission royalties from the Copyright Office and the MPAA by falsely representing that fictitious business entities were owners, or agents of owners, of copyrighted programs and were entitled to receive royalty fees, which fees defendant Raul C. GALAZ converted to his own personal use.

Manner and Means of the Scheme and Artifice

9. It was a part of the scheme and artifice that defendant Raul C. GALAZ identified programs retransmitted on cable and satellite systems for which retransmission royalties were previously unclaimed.

10. It was a further part of the scheme and artifice that defendant Raul C. GALAZ made fraudulent submissions to the Copyright Office in which he used false and fraudulent aliases and fictitious business entities to claim entitlement to cable and satellite system retransmission royalties as detailed below:

| MAILING DATE | CLAIM YEAR | ALIAS | FICTITIOUS BUSINESS ENTITY | PROGRAM |
|--------------|------------|-------------|----------------------------|----------------------|
| 7/28/95 | 1994 | Bill Taylor | Tracee Productions | Garfield and Friends |
| 7/30/96 | 1995 | Bill Taylor | Tracee Productions | Garfield and Friends |

| | | | | |
|---------|------|------------------|-------------------------------|------------------------------|
| 7/05/97 | 1996 | Bill Taylor | Tracee Productions | Garfield and Friends |
| 7/20/97 | 1996 | Bennett Stablich | Agman Animation | Bone Chillers |
| 7/10/98 | 1997 | Bennett Stablich | Agman Animation | Bone Chillers |
| 7/22/97 | 1996 | Harry Lough | BAL Productions | Unsolved Mysteries |
| 7/18/97 | 1996 | John Motoran | Blink Productions | Blinky Bill |
| 7/28/98 | 1996 | John Motoran | Blink Productions | The People's Court |
| 7/08/97 | 1996 | Helen Reed | Golden Parachute Distribution | Goosebumps |
| 7/08/98 | 1997 | Helen Reed | Golden Parachute Distribution | Goosebumps |
| 7/13/97 | 1996 | George Palt | KickFilm Distribution | Walker, Texas Ranger |
| 7/13/97 | 1996 | James Hitchman | Pointe Media | Moesha |
| 7/24/97 | 1996 | Joel Sachs | Sachs Associates | Bananas In Pajamas |
| 7/12/98 | 1997 | Joel Sachs | Sachs Associates | Bananas In Pajamas |
| 7/03/97 | 1996 | Fred Demann | Tier Media | Teenage Mutant Ninja Turtles |
| 7/13/98 | 1997 | Fred Demann | Tier Media | Teenage Mutant Ninja Turtles |

11. It was a further part of the scheme and artifice that defendant Raul C. GALAZ used various methods, means, and devices to misrepresent to the Copyright Office and the MPAA that cable and satellite retransmission royalties were due and owing, including but not limited to:

(a) the use of false aliases in applications to and in correspondence with the Copyright Office and the MPAA;

(b) the use of a telephone answering service in the name of fictitious business entities;

(c) the rental of private mail depositories in the name of fictitious business entities for the purpose of receiving correspondence from the Copyright Office and the MPAA;

(d) the opening of accounts at stock brokerage firms for Tracee Productions using the alias Francisco Dias;

(e) the opening of additional stock brokerage accounts under multiple false aliases by transferring stolen proceeds;

(f) the opening of an offshore bank account in Antigua in the name of Artist Collections Group, a Bahamas corporation;

(g) the transferring of \$129,000.00 of stolen proceeds to the Artist Collections Group offshore bank account;

(h) arranging the retention of an attorney to negotiate a settlement with the original owners of the copyright royalty rights to "Garfield and Friends."

12. It was a further part of the scheme and artifice that defendant Raul C. GALAZ converted to his own benefit the following sums of money to which he was not entitled, based on his fraudulent submission of claims relating to "Garfield and Friends":

| <u>MPAA Check Number</u> | <u>Date</u> | <u>Amount of the Check</u> |
|--------------------------|-------------|----------------------------|
| (1) 00005813 | 12/17/96 | \$80,700.00 |
| (2) 00005907 | 4/07/97 | \$17,916.00 |
| (3) 00006324 | 2/09/98 | \$189,984.00 |
| (4) 00006419 | 4/23/98 | \$39,703.00 |

13. It was a further part of the scheme and artifice that defendant Raul C. GALAZ concealed and perpetuated his scheme by testifying falsely under oath at a statutorily convened Copyright Arbitration Royalty Panel administrative proceeding that: (1) he was not Bill Taylor; (2) he did not have any involvement or interest in companies he represented in particular, Tracee Productions and the other companies identified in paragraph 10; and (3) he never filed a claim without authorization.

Execution of the Scheme and Artifice to Defraud

14. On or about July 31, 1997, the exact date being unknown, in the District of Columbia and elsewhere, the defendant,

Raul C. GALAZ,

for the purpose of executing the above-described scheme and artifice, and attempting to do so, placed and caused to be placed in an authorized depository for mail matter, to wit, an envelope containing a Tracee Productions claim for 1996 copyright retransmission royalties for the program "Garfield and Friends" and caused such matter to be delivered by the United States Postal Service according to the directions thereon from California to the United States Copyright Office located in Washington, D.C.

All in violation of Title 18, United States Code, Sections 1341 and 2.

May 29, 2002
DATE

ROSCOE C. HOWARD, JR.
United States Attorney
for the District of Columbia

By: William H. Bowne
William H. Bowne, III
Trial Attorney, Crim. Div., Fraud Section
1400 New York Avenue, N.W.
Washington, D.C.
Tel: 202-514-7023

U.S. DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

2002 MAY 27 PM 4:45

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

UNITED STATES OF AMERICA,

MAYER-WHITTINGTON

Plaintiff,

v.

Raul C. GALAZ,

Defendant.

Criminal No:

02 - 230

FILED

MAY 30 2002

**MANCY MAYER WHITTINGTON, CLERK
U.S. DISTRICT COURT**

PLEA AGREEMENT

The defendant, defense counsel and the undersigned on behalf of the United States have executed the attached plea agreement in resolving criminal prosecution of the identified activities.

May 29, 2002

DATE

ROSCOE C. HOWARD, JR.

United States Attorney

for the District of Columbia

By: William H. Bowne III

William H. Bowne, III

Trial Attorney, Crim. Div., Fraud Section

1400 New York Avenue, N.W.

Washington, D.C.

Tel: 202-514-7023

U.S. District and Bankruptcy Courts
for the District of Columbia

A TRUE COPY 5/14/14

ANGELA D. CAESAR, Clerk

By: Sheryl Harris

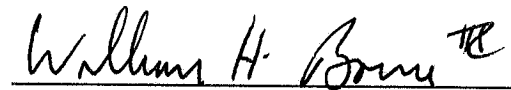
Deputy Clerk

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the Plea Agreement in this case was served this day by first-class mail on counsel for defendant Raul C. Galaz at the following address:

Whitney C. Ellerman, Esq.
Janis, Schuelke & Wechsler
1728 Massachusetts Avenue, N.W.
Washington, D.C.

Dated: May 29, 2002



William H. Bowne, III
Trial Attorney, U.S. Dept. Of Justice
Criminal Division, Fraud Section
10th and Constitution Avenues, N.W.
Bond Building
Washington, D.C. 20530
Tel: (202) 514-7023

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA

v.

RAUL GALAZ

CRIMINAL NO.:

VIOLATION
18 U.S.C. § 1341
(Mail Fraud)

PLEA AGREEMENT

Pursuant to Rule 11 of the Federal Rules of Criminal Procedure, the United States of America, by the Fraud Section and the defendant, Raul Galaz, and his attorney agree as follows:

1. Defendant Galaz will waive Indictment and plead guilty in the United States District Court for the District of Columbia to the crime charged in the Information filed in the matter charging one count of Mail Fraud in violation of Title 18 United States Code § 1341.

2. Defendant Galaz is entering this agreement and is pleading guilty freely and voluntarily without promise or benefit of any kind, other than contained herein, and without threats, force, intimidation, or coercion of any kind.

3. The defendant knowingly, voluntarily, and truthfully admits the facts contained in the attached Information as the factual basis for Plea.

4. The defendant shall enter a plea of guilty to a one-count Information charging defendant with mail fraud, (18 U.S.C. § 1341), for engaging in a scheme and artifice to defraud the United States and the Motion Picture Association of America of money and property by making false statements and representations to the United States Copyright Office and to the Motion Picture Association of America and by giving materially false sworn testimony in a statutorily mandated administrative proceeding convened by the Library of Congress.

5. The defendant understands the nature of the offense to which he is pleading guilty, and the elements thereof, including the penalties provided by law. The charge

carries a maximum sentence of imprisonment for a term not to exceed five (5) years, a \$250,000 fine, or both, with a mandatory special assessment of \$100. The defendant understands that the Court may impose a term of Supervised Release to follow any incarceration, in accordance with Title 18, United States Code, Section 3583, and that, in this case, the authorized term of supervised release is not more than three years.

6. The defendant agrees to cooperate completely, candidly, and truthfully in the present investigation of a scheme to defraud the United States Copyright office and the Motion Picture Association of America. Specifically, the defendant agrees:

- a. To provide complete, truthful, and candid disclosure of information and all records, writings, tangible objects, or other requested materials of any kind or description that he has which relate directly or indirectly to the subject of this investigation;
- b. To answer completely, truthfully, and candidly all questions put to him by attorneys and law enforcement officials during the course of this investigation;
- c. To make himself available for interviews by attorneys and law enforcement officers of the government upon request and reasonable notice;
- d. Not to attempt to protect any person or entity through false information or omission, nor falsely to implicate any person or entity;
- e. To comply with any and all reasonable requests from federal government authorities with respect to the specific assistance that he shall provide;
- f. To answer, at trial, before the grand jury, or at any hearing or administrative proceeding arising out of this investigation, all questions put to him by the court or by the attorney for any party completely, truthfully, and candidly; and

- g. To provide a full and complete accounting of all assets to the Probation Office including real or intangible, held by him or in any other name for his benefit.

7. Pursuant to U.S.S.G. § 1B1.8, the United States and defendant agree that since defendant has agreed to cooperate with the United States, information provided by defendant about: 1) fraudulent claims and representations made in the name of Bill Taylor and Tracee Productions; 2) fraudulent claims and representations made in the names of eight other fictitious persons and associated companies identified paragraph 11 of Count 1 of the attached Information; and 3) false statements made during an administrative hearing conducted by a Copyright Arbitration Royalty Panel convened by the Library of Congress to determine 1997 copyright cable and satellite retransmission royalty distribution, shall not be held against him, except as follows:

- a. information that was known to the United States prior to the date this plea agreement and the interview of the defendant pursuant to an interview agreement;
- b. in a prosecution for perjury or giving a false statement pursuant to paragraph 12 of this agreement; and
- c. if there is a breach of this agreement by defendant as determined under the provisions of paragraphs 11 and 12. In the event of such a breach, the United States retains the right to make use of information and statements provided by defendant as described in paragraph 11.

8. Nothing in this plea agreement restricts the Court's or the Probation Office's access to information and records in the possession of the United States. Further, nothing in this agreement prevents the government in any way from prosecuting the defendant should the defendant provide false, untruthful or perjurious information or testimony.

9. In return for the defendant's full and truthful cooperation and his plea of guilty to the charges described in paragraph 1 of this agreement, the Fraud Section agrees to bring no additional criminal charges in the District of Columbia or any other judicial district against the defendant relating to or arising from the matters identified in the Criminal Information to which the defendant will plea guilty.

10. Should any other prosecuting jurisdiction attempt to use truthful information the defendant provides pursuant to this agreement against the defendant, the United States agrees, upon request, to contact that jurisdiction and ask that jurisdiction to abide by the provision contained in paragraph 8 of this agreement. The parties understand that the prosecuting jurisdiction retains discretion over whether to use such information.

11. If defendant fails to make a complete, truthful, and candid disclosure of information to federal law enforcement officers, government attorneys, and grand juries conducting this investigation, or to the Court, and/or if he fails to comply with any other of the material conditions and terms set forth in this agreement, he will have committed a material breach of the agreement which will release the government from its promises and commitments made in this agreement. Upon defendant's failure to comply with any of the terms and conditions set forth in this agreement, the government may fully prosecute him on all criminal charges that can be brought against him. In such a prosecution, the United States will have the right to make derivative use of any statement made by defendant pursuant to this cooperation agreement, and to impeach defendant with any such statements. Defendant waives any right to claim that evidence presented in such prosecution is tainted by virtue of the statements he has made.

12. In the event of a dispute as to whether defendant has knowingly given materially false, incomplete or misleading information in fulfilling the terms of his cooperation agreement or whether defendant has knowingly committed any other material breach of this agreement, and if the United States wants to exercise its rights under

paragraph 11, and if defendant so requests, the matter shall be submitted to the Court and shall be determined by the Court in an appropriate proceeding at which defendant's disclosures and documents shall be admissible and at which time the United States shall have the burden to establish the same by a preponderance of the evidence.

13. At all briefing and interviewing sessions conducted by investigators and/or attorneys for the government, defendant shall be entitled to the presence, advice, and assistance of counsel, unless waived.

14. This agreement is premised on the assumption that up to the time of sentencing defendant will have committed no new offenses since pleading guilty in this matter. Should it be determined, using a probable cause standard, that defendant has committed new offenses, the government may take whatever position it believes appropriate as to the sentence and terms of release. In addition, if in this plea agreement the United States has agreed to recommend or refrain from recommending to the sentencing judge a particular resolution of any sentencing issue, the Government reserves the right to full allocution in any post-sentence litigation in order to defend the sentencing judge's ultimate decision on such issues.

15. The defendant understands and acknowledges that the offenses with which he will be charged are subject to the provisions and guidelines of the "Sentencing Reform Act of 1984," Title 28, United States Code, Section 994(a).

16. The United States cannot and does not make any promise or representation as to what sentence the defendant will receive or what fines or restitution, if any, he may be ordered to pay. The defendant understands that the sentence and the sentencing guidelines applicable to his case will be determined solely by the Court, with the assistance of the United States Probation office, and that he will not be permitted to withdraw his plea regardless of the sentence calculated by the United States Probation office or imposed by the Court.

17. Defendant Galaz understands and acknowledges that he may receive any sentence within the statutory maximums for the offenses of conviction.

18. Defendant and the United States agree to recommend the following regarding the Sentencing Guidelines, but the Defendant understands such recommendations are not binding on the Probation Office or the Court, and further, that the Court may impose any sentence within the maximum statutory sentence for the offense of conviction:

- a. The applicable Guideline is § 2F1.1.
- b. The base offense level under § 2F1.1 is 6.
- c. The amount of loss and intended loss to the government was more than \$320,000 and less than \$350,000 and increases the offense level by 8 under § 2F1.1(b)(1).
- d. The offense involved more than minimal planning and warrants a 2 level increase under § 2F1.1(b)(2).
- e. The government reserves the right to argue and present evidence at sentencing demonstrating that the Defendant attempted to obstruct the administration of justice by providing materially false sworn testimony in a statutorily mandated administrative proceeding sanctioned by the Library of Congress and warrants a 2 level increase under § 3C1.1. However, the defendant reserves the right to argue the non-applicability of this enhancement.
- f. The United States will recommend a reduction of 3 levels under § 3E1.1(b), if the Defendant clearly demonstrates acceptance of responsibility for the instant offense, including cooperating fully with the presentence report writer, with the Court, and the Library of Congress in all proceedings arising from this matter, and by complying with the other provisions of this Agreement. If

the Defendant fails to do so, the United States may take any position it deems appropriate with respect to this reduction.

- g. The parties agree that no other sentencing enhancement provisions apply and recognize however, that their determination is not binding on either the Court or the Probation Department.
- h. The government reserves the right to argue at sentencing that correct adjusted offense level is 15 and that the Defendant should receive a sentence that includes an 18 month period of incarceration.

19. Defendant understands that the recommendations contained in paragraph 18 is not binding on the sentencing judge or the Probation Office, and that he will not be entitled to withdraw his plea in the event that either the sentencing judge or the Probation Office does not accept or follow these recommendations.

20. At the time of sentencing, the United States will advise the sentencing judge and the probation office of the full nature, extent, and value of any cooperation provided by defendant to the United States.

21. Defendant Galaz understands that the Court may impose a fine, restitution, costs of incarceration, and costs of supervision.

22. The United States reserves the right to allocute in all respects as to the nature and seriousness of the offense and to make a recommendation as to sentencing. The attorney for the United States will inform the sentencing Judge and the Probation Office of (1) this agreement; (2) the nature and extent of defendant Galaz's activities with respect to this case; and (3) all other information in its possession relevant to sentencing.

23. Defendant Galaz agrees that if the Court does not accept his plea of guilty to the Information, this agreement shall be null and void.

24. Defendant understands that this agreement is binding only upon the Fraud Section of the Department of Justice. This agreement does not bind the Civil Division of

any United States Attorney's Office, the Tax Division of the Department of Justice, nor does it bind any state or local prosecutor. It also does not bar or compromise any civil or administrative claim pending or that may be made against the defendant. The United States will, however, bring this agreement and the full extent of defendant's cooperation to the attention of other prosecuting offices if requested.

25. This agreement constitutes the entire agreement between the United States and defendant Galaz. No other promises, agreements, or representations exist or have been made to defendant Galaz or his attorneys by the Department of Justice in connection with this case. This agreement may be amended only by a writing signed by all parties.


Dated this 29th day of May, 2002.

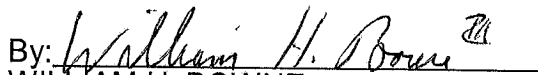
FOR THE DEFENDANT


RAUL GALAZ

FOR THE UNITED STATES

JOSHUA R. HOCHBERG
CHIEF, FRAUD SECTION
FOR THE DEPARTMENT OF JUSTICE


WHITNEY C. ELLERMAN
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By: 
WILLIAM H. BOWNE
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1400 New York Ave., N.W., Rm. 4114
Washington, D.C. 20005
(202) 514-7023

UNITED STATES COPYRIGHT ROYALTY JUDGES

| | | |
|---|---|--|
| In the Matter of | } | |
| | } | |
| Distribution of the 2000, 2001, 2002, and 2003 Cable Royalty Funds | } | Docket No. 2008-2 CRB CD 2000-2003 (Phase II) |
| | } | |
| | } | |

**MEMORANDUM OPINION* AND ORDER FOLLOWING
PRELIMINARY HEARING ON VALIDITY OF CLAIMS**

The issues before the Judges involve resolving challenges to claims asserted by the participants in this proceeding. The proceeding is one to distribute royalties collected pursuant to the compulsory license created by Section 111 of the Copyright Act. 17 U.S.C. § 111. Under Section 111, copyright owners are mandated to license their works for secondary transmission by cable service providers. In Phase I of this proceeding, participants established agreed categories of programming to which the Copyright Office should distribute the royalties collected for broadcast years 2000, 2001, 2002, and 2003.¹ In this Phase II proceeding, the participants, as representatives of claims holders, seek allocation of funds to the claimants in each category.

In August 2012, four of the participants in this proceeding filed motions or objections relating to the claims asserted by other participants. The Motion Picture Association of America, as representative of certain Program Suppliers ("MPAA") filed a motion to "dismiss" unauthorized claimants identified in the written direct statement of Worldwide Subsidy Group LLC d/b/a Independent Producers Group ("IPG"). The Settling Devotional Claimants ("SDC") also objected to certain claims asserted by IPG as did the Joint Sports Claimants ("JSC"). In turn, IPG, which opposed the respective objections of MPAA, SDC, and JSC, objected to certain claims asserted by SGC.

The participants made far-ranging objections and submitted papers and arguments to support their objections in a form that the Copyright Royalty Judges ("Judges") could not accept as evidence. Citing a lack of admissible evidence, the Judges denied all the motions and objections without prejudice and set the matter for an evidentiary hearing on claims objections, providing the participants with a pre-hearing schedule for exchanging exhibits, negotiating stipulations, and submitting legal memoranda. The Judges commenced the evidentiary hearing on November 13, 2012 with a continuance after two days of testimony to December 5, 2012, to complete the participants' presentations of evidence and argument. At the conclusion of the hearing, the Judges asked the participants to submit proposed findings of fact and conclusions of law with regard to the claims remaining at issue.

Following the hearing, all participants submitted proposed findings of fact and conclusions of law as directed by the Judges' order of December 19, 2012. In addition, IPG filed a motion to strike portions of the proposed findings and conclusions of the other parties, provoking responses to the motion. The continuing pleadings were neither invited, nor allowed, nor considered by the Judges in reaching their conclusions in this order. Below, the Judges discuss and rule upon each party's objections.

¹ The Copyright Act requires that claims for royalties be filed no later than July 31 of the calendar year following the broadcast year.

MPAA CHALLENGES TO IPG CLAIMS²

MPAA asserted claims of invalidity on several grounds that can be grouped into three categories: *i*) neither IPG nor the identified claimant filed a valid claim; *ii*) IPG identified itself as assignee or representative of claimants without substantiating its right to do so; and *iii*) IPG continued to assert claims on behalf of claimants after the claimants terminated any relationship with IPG. MPAA, relying on prior rulings on this issue³, characterizes these efforts by IPG as the filing of “placeholder” claims, which are not valid claims.

IPG conceded and withdrew all claims filed on behalf of Kid Friendly Productions and RCN Television, S.A. IPG responded to the remaining challenges by asserting that it had provided adequate documentation for all other claims. IPG claimed that MPAA failed to locate the documents or failed to deduce from circumstantial evidence that a representation contract existed at the relevant time. IPG alleges that the claimant’s counsel confirmed the representation or that the claimant submitted electronic documents by email. In some instances, IPG asserted that it forwarded an agreement to a claimant, but its only evidence is follow-up correspondence in which IPG asserts its reliance on the forwarded document without producing a signature of the party it seeks to bind in this proceeding. IPG argues that this evidence is sufficient to establish IPG’s authority either as an assignee or a representative. These arguments are addressed in turn below.

MPAA/IPG Stipulation

MPAA and IPG submitted a Stipulation prior to the preliminary hearing detailing claims that IPG would not assert. The stipulated list is attached to this Order as “Exhibit A.” The Judges hereby accept the stipulation. Therefore, IPG may not assert or collect royalties on account of the claims designated on Exhibit A.

Validity of Assignment

In some instances, IPG asserts that it is the assignee of the copyright at issue with respect to certain claims.⁴ The Copyright Act requires that a voluntary transfer of copyright ownership be in writing and signed by the rights owner or the owner’s “duly authorized agent.” See 17 U.S.C. § 204(a).

IPG has neither produced to other parties nor introduced into evidence any assignment documents. Therefore, the Judges find that IPG has not established itself as an assignee of rights that would justify distribution of royalties to IPG for its own account. Therefore, the Judges assess IPG’s role in the claim filing process as one of agent for the respective claimants.

² All participants in this proceeding have devoted considerable time and energy to an unnecessary re-hash of criminal charges against Mr. Galaz, his admission of guilt, and his subsequent sentence. The status of claims asserted in any proceeding other than the current one is not at issue in the current proceeding. The only evidentiary value of Mr. Galaz’s criminal history is its relevance to Mr. Galaz’s credibility as a witness. Mr. Galaz has not denied his guilt, the conviction, or the sentence. The Judges accept that historic fact and give it appropriate weight in determining Mr. Galaz’s credibility. The participants need not dwell on the details of Mr. Galaz’s criminal history any further in this proceeding.

³ MPAA cited two rulings in the 2000 proceeding before a Copyright Arbitration Royalty Panel (CARP), admitted as MPAA Exhibits 301, 302, and the published rulemaking in proceeding number 2001-3 found at 66 *Federal Register* 2958 (April 26, 2001) [*hereafter, F.R.*]

⁴ Mr. Galaz testified that he believed IPG to be the assignee of the copyright in cases in which IPG filed a claim as “assignee.” IPG’s counsel asserted that the right to collect royalties is one of the bundle of rights conferred by a copyright and that IPG’s alleged understanding with the copyright claimants amounted to an “assignment” of that portion of the copyright. See Tr. of Proceedings at pp 769-70 (Dec. 5, 2012).

Validity of Representation

At the heart of MPAA's objection to IPG's claims is an argument that sounds in contract. MPAA asserts that IPG cannot substantiate its agency relationship with the claimants it claims to represent because the writings and oral testimony offered by IPG do not satisfy the Statute of Frauds. MPAA argues that the nature of these proceedings is such that the duties of the agent cannot be performed within one year,⁵ bringing the representation agreement into the realm of agreements governed by the Statute of Frauds.⁶ As a preliminary matter, Statute of Fraud challenges to contracts, are outside the Judges' sphere of authority as they are matters of state contract law. The Judges' review is more circumscribed and is limited to whether IPG was duly authorized under the Copyright Act to file claims on behalf of and to continue to represent as an agent claimants in the current distribution proceeding. That being said, the Judges are skeptical that Statute of Fraud challenges would prevail in this context.

In the first instance, a cursory review of relevant state law decisions indicates that the Statute of Frauds is an affirmative defense that may be asserted only by a defendant in an action to enforce a contract.⁷ Even if MPAA could, on some unexplained theory, assert that defense as an interested third party or on behalf of claimants whom IPG purports to represent, it would not appear that the Statute of Frauds would impact the principal/agent relationship at issue here.⁸ The Copyright Act does not require that such relationship with respect to the claim filing process be memorialized in writing, nor do the Judges' rules adopted under that Act.

MPAA argues that any claims asserted as joint claims must be supported by written authorizations executed by the claimant(s) before July 31 of the claim filing period. It relies on a September 2000 Order that staff of the Register of Copyrights issued in Docket No. 2000-2 CARP CD 93-97. MPAA Exhibit No. 302. The order interprets an earlier staff order that required that proof of representation

⁵ Given the procedural requirements for a claims distribution proceeding, the minimum time for a contested distribution proceeding from the date of commencement to the date of the initial hearing on the direct case would exceed 11 months. See 37 C.F.R. § 351. Following the initial hearing, the participants present rebuttal cases and the Judges make a determination. If all issues regarding claims and distribution were agreed among the participants, however, the process could conceivably conclude before the end of one year.

⁶ No participant in this proceeding hazarded a choice of law analysis with regard to IPG's proffered evidence. In its submissions, MPAA implies that choice of law is irrelevant as contract law for California, Texas, and the District of Columbia do not favor IPG's efforts in this proceeding. Indeed, all three jurisdictions have adopted a Statute of Frauds and all three require a written memorandum containing all of the essential terms of an agreement before they will permit extrinsic evidence of its terms. Even then, extrinsic evidence can be admitted only for the purpose of clarifying an ambiguity as to terms, not for the purpose of supplying missing essential terms. See, e.g., *Boondoggles Corp. v. Yancey*, 2006 Tex. App. LEXIS 6896 (August 3, 2006) (*trier may consider extrinsic evidence surrounding formation of contract to "clarify, explain, or give meaning to terms... not... to provide essential terms"*); *Sterling v. Taylor*, 40 Cal.4th 757, 55 Cal. Rptr.3d 116 (2007), *reh. denied* (2007)(*extrinsic evidence cannot supply essential contract terms*).

⁷ *United States v. Kurlmann*, 2013 FED App. 0039P (6th Cir. February 13, 2013), 2013 U.S. App. LEXIS 2955, at Headnote 12.

⁸ In general, courts have held that the fiduciary relationship of principal and agent is outside the Statute of Frauds. See, e.g., *Genovese v. DCA Food Indus., Inc.*, 911 F.Supp. 378,380 (E.D.Mo. 1996)(*invalidating joint venture agreement under Statute of Frauds not dispositive of breach of fiduciary duty claim arising under contract*); *Goebel v. Schmid Bros., Inc.*, 871 F.Supp. 68,78 (D.Mass. 1994)(*acknowledging exception for fiduciary relationships*)(*dictum*); *Seneca Communications, Inc. v. Intern'l Bank of Cal.*, 163 Cal. Rptr. 176,180, n.7 (Ct. App. 1980)(*acknowledging estoppel to assert Statute of Frauds in fiduciary relationship*); *Gerhardt v. Weiss*, 55 Cal. Rptr. 425 (Ct. App. 1966)(*finding Statute of Frauds inapplicable to suit in equity against a faithless fiduciary*); *Walter H. Leimert Co. v. Woodson*, 270 P.2d 95, 97 (Cal. App. 1954)(*finding Statute of Frauds inapplicable in equitable action to impose constructive trust based on breach of fiduciary duty*).

be in writing in light of “procedural infirmities” in certain claims at issue in the proceeding. MPAA would have the Judges adopt this requirement for the current proceedings, although it was clearly intended to apply only to the circumstances at issue in that proceeding.

Neither the Copyright Act nor the regulations in effect at the time the claims in this proceeding were filed codifies the requirement of a “clear and unambiguous written agreement dated or in existence prior to July 31 of the filing year” that MPAA advocates in this proceeding. In fact, the staff of the Copyright Royalty Board (CRB) reviews filed claims only to substantiate facial validity. The CRB does not go behind the filings to ascertain the scope of an agent’s authority to assert a joint claim. When a representation agreement is in place, the Judges do not assume authority to determine the validity of such agreement or interpret its terms. The task in this proceeding is to determine whether the claimant intended for its claim to be filed on its behalf by another. The existence of such an agreement at the time the claim was filed evidences such intent.

MPAA asserts that, even if no writing is required, IPG’s circumstantial evidence and oral testimony are not sufficiently indicative of its authority in any event. MPAA asserts that the writings submitted by IPG, including form agreements, correspondence, email strings, and “confirmations” or “extensions” are insufficient to establish the necessary contractual relationship. MPAA also challenges the testimony of Mr. Galaz, IPG’s primary witness, regarding IPG’s authority to represent certain claimants, noting that Mr. Galaz, was not involved in the operation of IPG from 2002 until 2005 (at the earliest) and therefore could not credibly substantiate IPG’s authority to file claims during this period.⁹

Mr. Galaz, who was not active in the company beginning in 2001 and had no ownership interest in the company beginning in 2002, was IPG’s only witness. Notably, the claims at issue in this proceeding for broadcast years 2000 to 2003 were due to be filed by July 31 of 2001 through 2004. Mr. Galaz and IPG’s counsel presented documents that they claim evidence a representation agreement between IPG and the claimants for whom it filed claims in these proceedings. IPG asserted an inability to produce company documents and an inability to contact Ms. Oshita, the managing member of IPG during most of the time relevant to this proceeding. IPG offered a patchwork of documents to evidence its authority to represent claimants in this proceeding: representation agreements, “Mandate Agreements”, email strings, and hard copy correspondence. In some instances, IPG produced unauthenticated email correspondence between Ms. Oshita or Ms. Vernon and an alleged principal claimant. IPG also offered self-serving correspondence that purported to forward an unexecuted representation agreement to document an oral or informal agreement. Some of the correspondence and form agreements were dated outside the necessary timeframe to establish the agency relationship necessary for IPG to be a

⁹ IPG as it is currently structured devolved from Worldwide Subsidy Group Texas and Worldwide Subsidy Group California (together, “Worldwide”). Mr. Galaz and his former wife owned a 75% interest in Worldwide. At the dissolution of their marriage, each spouse retained a 37.5% interest in Worldwide. In 2001, Mr. Galaz ceased an active role in the business of Worldwide. In 2002, he sold his interest to Ms. Marian Oshita. Ms. Oshita was based in California and she acted as IPG’s managing member. Mr. Galaz testified that he no longer holds any ownership interest in IPG. IPG currently is a d/b/a of Worldwide Subsidy Group LLC, a Texas limited liability company. According to Mr. Galaz’s testimony, the two Worldwide arms of the company “merged” in 2004. In 2005, Ms. Denise Vernon, Mr. Galaz’s sister, acquired an interest in the company. IPG asserts that many of IPG’s corporate documents relevant to IPG’s authority to represent claimants in this proceeding were lost or became otherwise inaccessible during the various ownership transitions. Mr. Galaz testified that when Ms. Vernon became a member of the company, both he and Ms. Vernon sought through various means, including legal action, to recover the company books and records from Ms. Oshita. He testified that their efforts failed.

claimant's authorized representative. Some of the correspondence consisted of exchanges of lists of titles without more. In many instances, IPG offered communications that referred to attachments that were not offered in evidence. Not surprisingly, MPAA objects to IPG's evidence as insufficient to establish valid contracts between IPG and the claimants it purports to represent. IPG asks the Judges to excuse gaps in IPG's paper trails and to cobble together valid, binding, and enforceable writings from the evidence at hand.

Unexecuted copies of alleged agreements cannot establish IPG's authority. Self-serving unilateral assertions of an agreement do not suffice. An email communication listing program titles or code numbers is not an agreement as it lacks sufficient essential terms. Email correspondence in 2012 asking for an agreement authorizing representation for royalty years 2000 to 2003 and for clarification of program titles falls far outside the boundaries of the requirement of authority to file a claim and fails to establish the necessary authority.¹⁰

Extension agreements alone, without the underlying agreement, cannot establish the validity of the original representation or provide a basis to ascertain all of the essential terms of the alleged original agreement, such as temporal or geographical limitations, affiliated claimants, the authority of the signer, *etc.* Notwithstanding these shortcomings, an extension agreement signed by the claimant signifies agreement to representation for the period covered by the extension agreement only and is sufficient to establish the existence of the necessary relationship. The terms of that agreement remain for IPG and the claimant to ascertain.

Termination of Representation

MPAA produced evidence of claimants withdrawing any authority they had granted to IPG. IPG contends that MPAA is misinterpreting the communications. Alternatively, IPG argues that a letter terminating its authority confirms that some authority had existed. The contents of the letters admitted into evidence, however, do not support the leap of faith IPG requests of the Judges. As an example, Scholastic Productions, Inc. wrote to IPG clearly stating it had no record of authorizing IPG to act on its behalf allowing that, "if you [IPG] have filed any claims on behalf of my client..." IPG could complete the process. Without a timely, executed agreement, however, IPG cannot pursue any claims for any year on behalf of Scholastic Productions, Inc. See MPAA Exhibit 344. Other examples of termination of representation and the impact on IPG's authority to represent such claimants are discussed below.

Placeholder Claims

MPAA challenges certain claims for which IPG cannot produce proof of authorization as "placeholder" claims. IPG correctly denies this allegation. "Placeholder claims" is terminology extracted from the 1997 cable distribution proceedings, which, as discussed above, presented unique factual issues that are not present in this proceeding. As a result, the Judges must review each claim at issue and the underlying evidence (or lack thereof) to determine whether IPG was duly authorized to file the claim and if so, whether that authority is still in effect

Judges' Conclusions Regarding MPAA Challenges

In accordance with the foregoing analysis, the Judges **GRANT** and **DENY** MPAA's challenges to the claims asserted by IPG and listed on "Exhibit B" for the reasons indicated in the Exhibit.

¹⁰ See 37 C.F.R. § 360(b)(2). Ambiguous indicia of retroactive ratification of asserted authority are insufficient to establish that authority was in place when a claim was filed.

SDC CHALLENGES TO IPG CLAIMS FOR DEVOTIONAL CLAIMANTS

During the discovery process, SDC and IPG exchanged many document requests. As SDC noted, in its responses IPG contended it had “no further documents” to support its claims. Given the dearth of documentary evidence, SDC asserts that IPG is not authorized to assert claims in the Devotional category, either as assignee or representative. SDC asserts that IPG is making claims for entities with which it has no agreement and entities for which it has incomplete documents that do not authenticate IPG’s claimed status as authorized representative of the claimant.

SDC and IPG engaged in pre-hearing discussion regarding a possible stipulation to facts. They were unable to reach an agreement. The parties, therefore, resolved none of the challenges before the hearing. The Judges, therefore, are forced to conduct the time-consuming and painstaking examination of each challenge and to rule separately on each one, which is done below.

SDC seeks dismissal of IPG’s claims filed on behalf of (1) Benny Hinn Ministries (“Benny Hinn”), (2) Creflo A. Dollar Ministries (“Creflo”), (3) Billy Graham Evangelistic Association (“BGEA”), (4) Jack Van Impe Ministries International (“Jack Van Impe”), (5) Life Outreach International (“Life Outreach”), (6) Salem Baptist Church of Chicago, Inc. (“Salem Baptist”), and (7) W.R. Portee Word Healing Ministry aka Southside Christian Palace Community (“W.R. Portee”). SDC PFFCL at 64-65, ¶ 235.

Benny Hinn and Creflo A. Dollar Claims

With respect to Benny Hinn and Creflo, SDC argues that the “Representation Agreements” that supposedly authorized IPG to file claims on their behalf only authorized IPG the right to collect money “distributed by audiovisual copyright collection societies throughout the world.” SDC PFFCL at 47, ¶ 183. According to SDC, since the Copyright Office is not a copyright collection society, the Representation Agreements did not authorize IPG to file the Benny Hinn and Creflo claims in this proceeding. *Id.* at 47-48, ¶ 184. IPG disputes SDC’s opposition to its authority to file claims on behalf of Benny Hinn and Creflo, arguing, among other things, that each claimant has “tacitly” ratified IPG’s representation of its interests. *IPG’s Response to the Settling Devotional Claimants’ Proposed Findings of Fact and Conclusions of Law Re Its Motion to Strike Portions of IPG’s Claims and Direct Case* at ¶ 60 and ¶ 63, citing IPG exhibits 69 and 71-73 (“IPG’s Response”).

After reviewing the evidence the Judges reject SDC’s requests to dismiss IPG’s claims on behalf of Benny Hinn and Creflo. Although the representation agreements in evidence do not expressly reference distribution proceedings by the Judges or their predecessors, Exhibit A to the representation agreements refers to “Royalties and charges imposed by law with respect to the transmission by cable and satellite of terrestrial broadcast signals.” See SDC Exhs. 101 and 103. This reference combined with the email exchanges between IPG and Benny Hinn and Creflo representatives in which those representatives, at IPG’s request, identify programs to which they might be entitled to copyright royalties (IPG Exh. 69, 71 and 73) are sufficient for purposes of this preliminary stage of the proceeding to allow IPG to continue to represent Benny Hinn and Creflo.¹¹ Therefore, SDC’s request with respect to these two claimants is **DENIED**.

¹¹ This ruling addresses only objections to IPG’s authority to represent these claimants at this stage of the proceeding. This preliminary ruling should not be interpreted as a conclusion with respect to the validity of or value of any claims that IPG has filed on behalf of these claimants.

Life Outreach Claims

SDC asks the Judges to dismiss IPG's claims filed on behalf of Life Outreach based on various grounds, including IPG's alleged failure to provide timely evidence of authority to file claims on Life Outreach's behalf, alleged flaws in the documentation showing such authorization, and a lack of valid claims. SDC PFFCL at ¶¶ 188-191. IPG responds that the representation agreements were erroneously omitted from the initial document production but that IPG provided the agreements to SDC two months before the deadline for the exchange of documents for the preliminary hearing and therefore SDC was not prejudiced by the delay. *IPG Response* at ¶ 66.

After reviewing the evidence in the record, the Judges find that the Mandate Agreements between Life Outreach and IPG are sufficient to show that Life Outreach intended to authorize IPG to file claims on Life Outreach's behalf for 2000-2003. SDC provided no persuasive evidence to suggest that Life Outreach intended to terminate its relationship with IPG with respect to this proceeding. What value, if any, Life Outreach's claims might have will be addressed at a later stage of the proceeding. SDC's request to dismiss IPG's claims filed on behalf of Life Outreach is **DENIED**.

BGEA Claims

SDC asks the Judges to dismiss IPG's claims filed on behalf of BGEA because: (1) IPG allegedly did not file any claim for BGEA for 2000, (2) IPG allegedly failed to produce timely representation agreements with respect to BGEA for 2002-2003 until after the close of discovery, (3) BGEA terminated IPG's authority to represent it in 2005. SDC PFFCL at 49.

In response, IPG admits that it "asserts no claim on behalf of BGEA applicable to calendar year 2000." *IPG's Response* at ¶ 71. With respect to claims for the years 2001-2003, IPG contends that BGEA "tacitly" ratified IPG's representation of its interests in the proceeding. *IPG Response* at ¶ 75, *citing* IPG Exhs. 89-94.

SDC asks the Judges to dismiss claims that IPG filed on behalf of BGEA for 2000-2003. IPG does not assert a claim on behalf of BGEA for 2000. Therefore, SDC's request with respect to such 2000 claim is **DENIED** as moot.

With respect to the claims for 2001, 2002, and 2003, evidence in the record supports IPG's contention that it was authorized to file claims on BGEA's behalf for those years. See IPG Exhs. 88-90. However, evidence in the record shows that BGEA terminated the agreements it signed in 2003 and 2004 for the collection of 2002 and 2003 royalties. See IPG Exh. 91. The revocation did not apply to the 2002 agreement that BGEA entered into with IPG for 2001 cable royalties, and the Judges find no other evidence that BGEA's revocation letter applied to the 2002 agreement. Therefore, the Judges deny SDC's request to dismiss IPG's claims on behalf of BGEA for 2001 cable royalties in light of the evidence that IPG was authorized to file such claims on BGEA's behalf and the absence of countervailing evidence to show that BGEA intended to revoke that authorization.

The claims with respect to 2002 and 2003 are more problematic. BGEA's letter terminating its 2003 and 2004 agreements with IPG is clear:

The purpose of this letter is to terminate our agreements with Independent Producers Group dated July 22, 2003 and July 20, 2004, respectively, effective immediately. Those agreements specifically limited your services to television programming year 2002 and 2003. You and your company or affiliates are no longer

authorized to claim to represent, to represent, or to file any future claims for our organization in any domestic or international matters.

Letter dated June 28, 2005, from Justin T. Arnot, Assistant General Counsel, BGEA, to Marian Oshita, Vice President, IPG, IPG Exh. 91.

IPG references no unequivocal revocation of the agreement termination letter but rather references correspondence from IPG representative Denise Vernon, the date of which is unclear, in which she notes that “BGEA is legally (and contractually) incapable of collecting on these claims itself, as such entitlement was created pursuant to WSG’s ‘joint claims’ filed with the U.S. Copyright Office in 2003 and 2004, and multiple ‘notices of intent to participate’ filings over the last decade, thereby precluding collection of BGEA royalties except vis-à-vis WSG.” Ms. Vernon’s letter goes on to state: “The alternative to a lawsuit against BGEA is for BGEA [to] cooperate by simply providing WSG with the titles of programs it owns or controls, allow WSG to complete its services, and for BGEA to receive its royalties. As noted, BGEA is legally incapable of collecting these royalties via WSG’s prior filings.” *Id.* IPG then reference email correspondence between IPG and BGEA presumably after Ms. Vernon’s letter to show that BGEA decided to revoke its termination. See IPG Exh. 92.

As a preliminary matter, those who file claims on behalf of copyright claimants act as their agents. Despite statements in Ms. Vernon’s letter to the contrary, the legal right to the royalties, if any, remains with the claimant. The claimant does not sacrifice that right merely because it authorizes an agent to file a claim on its behalf with the Judges or their predecessors. The terms of the Mandate Agreement that BGEA entered into with IPG states that “[t]he undersigned claimant hereby grants and assigns Independent Producers Group (IPG) the exclusive right to apply for and collect on behalf of the undersigned all monies distributed by the United States Copyright Office and the [CARP].” See, e.g., IPG Exh. 89. The right to apply for and collect royalties on behalf of another does not create the entitlement to royalties. The entitlement to royalties, if any, is created by the Copyright Act. The Judges take a dim view of IPG’s mischaracterization of BGEA’s rights under the Copyright Act and of the strong-arm tactics it used to seek to prevent BGEA from severing the principal/agency relationship that BGEA had clearly revoked. Nevertheless, dismissing the claims that IPG filed on BGEA’s behalf, as the SDC has requested, would unfairly punish BGEA. The Judges want to make it clear, however, that claimants may pursue their own claims before the Judges even if such claims are initially filed on their behalf by another.

Jack Van Impe Claims

SDC challenges IPG’s claims with respect to Jack Van Impe. Regarding 2000, SDC contends that IPG filed no claim for Jan Van Impe. Regarding 2001-2003, SDC contends that IPG provided no representation agreement to show that IPG was authorized to file claims on Jack Van Impe’s behalf. SDC further contends that email correspondence between IPG and Jack Van Impe from 2011 and 2012 does not show that IPG was authorized to represent Jack Van Impe in this proceeding. SDC PFFCL at ¶¶ 79-83. IPG concedes that it does not assert a claim on Jack Van Impe’s behalf for 2000. IPG’s Response at 6. IPG contends that it produced a representation agreement between IPG and Jan Van Impe but did not include it in the exhibit book presented during the preliminary hearing. *Id.* IPG contends, however, that IPG provided correspondence between IPG and Jack Van Impe that “tacitly ratifies” IPG’s representation of Jack Van Impe. *Id.*

Given that the parties agree and IPG asserts no claim for Jack Van Impe for 2000, SDC’s request to dismiss any such claim is **DENIED** as moot. With respect to IPG’s authority to file claims on Jack Van Impe’s behalf for 2001-2003, the only evidence in the record, other than self-serving correspondence and testimony from IPG’s own witnesses, is curt response from a

representative of Jack Van Impe to IPG stating “Yes, these titles belong to our ministry.” See IPG Exh. 99. That evidence alone is insufficient to show that IPG was duly authorized to file claims on Jack Van Impe’s behalf from 2001-2003. Therefore, SDC’s request to dismiss those claims is **GRANTED**.

Salem Baptist Claims

SDC’s challenges with respect to the Salem Baptist claims are that IPG: (1) allegedly did not file claims for 2000 royalties and (2) presented no representation agreements or other sufficient evidence to show IPG was authorized to file claims for Salem Baptist for 2001-2003 royalties. IPG responds that: (1) it does not assert a claim for 2000, and (2) although it provided no agreement, correspondence between IPG and Salem Baptist and other supporting documentation from IPG “tacitly ratifies” IPG’s authority to represent Salem Baptist.

With respect to SDC’s request to dismiss any claim for 2000 royalties for Salem Baptist, the request is **DENIED** as moot. With respect to claims for 2001-2003 royalties, the only evidence, other than that prepared by IPG, to show IPG’s authority to represent Salem Baptist in this proceeding is a statement from Salem Baptist stating: “Attached is the revised list of the unclaimed Spreadsheet.” IPG Exh. 100. After reviewing all relevant evidence in the record, the Judges find insufficient evidence to show that IPG was authorized to file claims on Salem Baptist’s behalf for 2001-2003. Therefore, SDC’s request to dismiss those claims is **GRANTED**.

W.R. Portee Claims

SDC requests dismissal of IPG claims filed on behalf of W.R. Portee, stating: (1) no claims were made for W.R. Portee for 2000-2002; and (2) IPG presented no evidence, other than IPG’s own record that it had added W.R. Portee to its list of cable claimants for 2003, that IPG was authorized to file claims on W.R. Portee’s behalf. SDC PFFCL at ¶¶ 88-89. IPG agrees that it has not asserted claims on W.R. Portee’s behalf for 2000-2002. IPG alleges that it entered into an agreement with W.R. Portee to file claims on its behalf for 2003 royalties, and references testimony from Mr. Galaz stating his belief that IPG was authorized to represent W.R. Portee with respect to claims for 2003 royalties. See IPG Response at 6, *citing* Tr. 438:1-11 (Galaz).

Given that there is no dispute that IPG is not asserting claims on W.R. Portee’s behalf with respect to royalties for 2000-2003, SDC’s request is **DENIED** as moot. Moreover, after reviewing Mr. Galaz’s testimony regarding IPG’s alleged authority to file claims on W.R. Portee’s behalf for 2003, the Judge’s conclude that there is insufficient evidence in the record to show that IPG was authorized to file claims on W.R. Portee’s behalf for 2003 royalties. Therefore, SDC’s request to dismiss such claims is **GRANTED**.

JSC CHALLENGES TO IPG CLAIMS RELATING TO FIFA, UNCF, AND USOC

IPG has asserted various claims for 2000, 2002, and 2003 cable royalties against the Phase I Sports category purportedly on behalf of *Fédération Internationale de Football Association* (“FIFA”), United Negro College Fund (“UNCF”), and United States Olympic Committee (“USOC”). In particular, IPG filed claims purportedly on FIFA’s behalf for Canadian Broadcasting Corporation telecasts of the 2002 World Cup soccer matches and of the 2002 World Cup Highlights and for telecasts by U.S. stations of the 2003 FIFA Confederations Cup (“COPA FIFA”) soccer matches (collectively, the “Soccer Programs”). IPG also filed claims for a telecast by a U.S. station of a 2002 UNCF celebrity golf and tennis tournament and for telecasts by U.S. stations of the 2000 U.S. Olympic Trials, purportedly on behalf of UNCF and USOC, respectively. See JSC PFFCL at 1.

The Joint Sports Claimants (“JSC”) seek dismissal of all of the above claims on various grounds. With respect to the Soccer Programs generally, JSC contends that (1) IPG is not authorized to represent FIFA in this proceeding or to claim any royalties under Section 111 of the Copyright Act attributable to the Soccer Programs and (2) the record does not establish that FIFA owns a copyright in, or that it is entitled to claim Section 111 royalties for, those programs.

Collected royalties are allocated to the claimant categories in Phase I of a distribution proceeding. This Phase II proceeding is to determine allocation to individual claimants within the funds categories. Movement of individual claims between categories can affect the amount each claimant receives ultimately as it changes the proportional share of claimants within the affected categories.

JSC contends that, with respect to two of the Soccer Programs (*i.e.*, the CBC telecasts of the 2002 World Cup and World Cup Highlights), IPG’s claims should be dismissed because, according to the JSC, “none of these programs is compensable in the Phase I Sports category.” *Id.* at 2. JSC argues that the CBC telecasts are compensable, if at all, only in the Phase I Canadian category.

JSC also seeks dismissal of IPG’s claims for the 2002 UNCF celebrity golf and tennis tournament and for the 2000 U.S. Olympic Trials based on the same “miscategorization” ground. JSC contends that IPG should have filed the claims on behalf of UNCF and USOC against the Program Suppliers category rather than the Sports category, and therefore, the claims should be dismissed. *Id.*

JSC’s Challenge to IPG’s Representation of FIFA

JSC contends that IPG’s claims with respect to the Soccer Programs must be dismissed because, among other things, IPG is not FIFA’s designated representative and FIFA does not own the copyrights to the Soccer Programs. See JSC PFFCL at 53-54. With respect to its contention that IPG is not FIFA’s designated agent, JSC notes that IPG has provided no representation agreement to show that IPG was authorized to file royalty claims on FIFA’s behalf. *Id.* at 24-25. Moreover, JSC cites email correspondence from FIFA’s counsel to IPG stating: “As we have said before, FIFA has not and does not authorize you, Worldwide Subsidy Group, and/or Independent Producers Group to represent it before the Copyright Royalty Board. We intend to alert the Copyright Royalty Board to this fact.” *Id.* at 24, ¶ 7, *quoting* email from M. Dale to R. Galaz (July 30, 2012, 12:16 PM) (JSC Ex. 201 & IPG Ex. 42 at Ex. B).

JSC states that the fact that IPG was not authorized to represent FIFA in the current proceeding was further evidenced by a letter to the Judges from FIFA’s counsel dated August 1, 2012, in which FIFA’s counsel stated “IPG does not represent FIFA in the Distribution of the 2000-2003 Cable Royalty Funds, Docket No. 2008-2 CRB CD 2000-2003.” Letter from M. Dale to Copyright Royalty Judges (Aug. 1, 2012) (JSC Ex. 201 & IPG Ex. 42 at Ex. A). Moreover, JSC contends that FIFA itself has stated that it is uncertain whether it is the copyright owner of the Soccer Programs. JSC PFFCL at ¶ 17.

IPG does not dispute JSC’s assertion that IPG provided no representation agreement between IPG and FIFA but contends that no such agreement is required.¹² *IPG’s Response to*

¹² IPG represents that “[v]arious books and records, including executed agreements, were in the exclusive possession of [a former IPG member], and have not been capable of recovery by IPG.” *IPG’s Proposed Findings of Fact and Conclusions of Law in Connection with the Joint Sports Claimants’ Motion to Dismiss IPG’s Phase II Claims on Behalf of Federation Internationale De Football Association*, Jan. 15, 2013, at ¶ 16.

JSC's *Proposed Findings of Fact* at ¶ 8. IPG represents that FIFA authorized IPG to act on its behalf in an email from a FIFA representative dated July 13, 2001, in which FIFA purportedly stated "FIFA is interested in testing the services of [IPG] in the administration of retransmission royalties. Please go ahead with the necessary steps and keep us informed about the proceedings and the outcome." *Id.* at ¶ 14. JSC counters that, even assuming FIFA had made the above-quoted statement, it "hardly qualifies as a 'direction to act' with respect to the current proceeding, or any other for that matter." JSC PFFCL at 27, ¶ 13, *quoting* email from M. Dale to R. Galaz (July 30, 2012; 12:16 PM) (JSC ex. 201 & IPG Ex. 42 at Ex.B).

Judges' Analysis of IPG Claims to Soccer Programs

Section 111 of the Copyright Act sets forth the procedures the Judges must follow in authorizing the distribution of cable royalties. In particular, Section 111(d)(3) directs that royalty fees deposited pursuant to the Copyright Act shall be distributed to copyright owners who claim that their works were the subject of secondary transmissions by cable systems during the relevant semiannual period. Section 111(d)(4)(B) of that Act directs that royalty fees deposited pursuant to the Act shall be distributed "to the copyright owner entitled to receive them, or to their designated agents." The Judges' rules adopted under Section 111 of the Act require, among other things, that claims for cable royalties contain an original signature of the copyright owner(s) or of a "duly authorized representative" of the copyright owner(s). 17 CFR § 360.3(b)(1)(v) (for single claims) and 360.3(b)(2)(vi) (for joint claims). This requirement mirrors one that was in place when the claims at issue in this proceeding were filed.¹³

After carefully reviewing the record, the Judges find that there is insufficient evidence to support IPG's contention that it was FIFA's "designated agent" as that term is used in Section 111 of the Copyright Act or that IPG was "duly authorized" to file claims on FIFA's behalf pursuant to applicable regulations in effect at the time IPG filed the FIFA-related claims. Even if IPG were authorized to act on FIFA's behalf at some point in the past, FIFA has unambiguously revoked any such authorization. The Judges **GRANT** JSC's challenge to the Soccer Programs claims filed by IPG; therefore, IPG is not authorized to represent FIFA in this proceeding.

Although the term "designated agent" is not defined in the Copyright Act, the term "agent" is generally understood to mean "one who undertakes to transact some business, or manage some affair, for another, by the authority and on account of the latter, and to render an account of it." *Knights of Pythius v. Withers*, 177 U.S. 260, 268 (1900) (*internal quotations omitted*). The agency relationship "presupposes that the acts done by the agent shall be done in the interest of the principal, and that he shall receive his instructions from him." *Id.* For an agency relationship to exist, both the principal and the agent must consent that the agent is acting on the principal's

IPG does not appear to assert, however, that it actually had entered into a written representation agreement with FIFA.

¹³ The "duly authorized representative" language was carried over from the rules that governed CARP proceedings. See 59 FR 23964 (May 9, 1994) and 17 CFR § 252.3(b). The Judges' current rules (although not those of the CARP system) also require "a declaration of the authority to file the claim and of the veracity of the information contained in the claim and the good faith of the person signing in providing such information." 17 CFR § 360.4(b)(1)(vi) and (b)(2)(vii). The CRB adopted this provision in 2005 as part of the Judges' implementing regulations and based this requirement on provisions that the Copyright Office proposed the prior year to accommodate electronic filing of claims. 70 FR 30901, 30904 (May 31, 2005). The CRB declined to adopt a personal identification number ("PIN") requirement for claimants that the Copyright Office had proposed in an effort to prevent fraudulent claims. Instead, the CRB, in response to commenters' complaints about the potential burdens and unlikely effectiveness of the PIN requirement, decided to "rely upon the verification that accompanies each claim and the potential of criminal sanctions for false claims." *Id.* To be timely, the IPG claims at issue in this proceeding would have been filed between 2001 and 2004, prior to implementation of the Judges' regulations.

behalf and subject to the principal's control. *Akamai Technologies, Inc. v. Limelight Networks, Inc.*, 629 F.3d 1311, 1319 (Fed. Cir. 2010), citing Restatement (Third) of Agency § 1.01. The "burden of proving agency, as well as the scope of the agent's authority, rests upon the party asserting the existence thereof..." *California Viking Sprinkler Co. v. Pacific Indemnity Co.*, 213 Cal. App.2d 844, 850 (1963).

While neither the Copyright Act nor the Judges' rules governing this proceeding require that a written agreement be in place to authorize a designated agent to act on behalf of a claimant, the parties must manifest in some unambiguous manner that they intended for a principal/agent relationship to exist between them. The only evidence in the record that would support the existence of such relationship between FIFA and IPG is IPG's assertion, supported by the testimony of its witness, Mr. Galaz, that a FIFA representative allegedly stated in 2001 that "FIFA is interested in testing the services of [IPG] in the administration of retransmission royalties. Please go ahead with the necessary steps and keep us informed about the proceedings and the outcome." Even if the Judges were to credit the accuracy of such alleged statement, it would hardly present the type of unambiguous manifestation that FIFA intended to enter into a long-term agency/principal relationship with IPG as IPG claims.

The evidence does not support the notion that IPG was the "duly authorized representative" of FIFA at the time IPG filed claims purportedly on FIFA's behalf. Since FIFA is aware of the existence of the current proceeding and has chosen not to participate in it on its own behalf and has not authorized anyone to pursue any claims that were filed on its behalf, the Judges dismiss all claims that IPG filed on FIFA's behalf.¹⁴ Even if the Judges were to conclude that such a relationship had been formed in 2001, FIFA's July 30, 2012 email to IPG stating that "FIFA has not and does not authorize you, Worldwide Subsidy Group, and/or Independent Producers Group to represent it before the Copyright Royalty Board" unambiguously revokes any such relationship. Therefore, the Judges conclude that the evidence does not support IPG's assertion that it is, or continues to be, FIFA's "designated agent" under Section 111 of the Copyright Act. IPG is not, therefore, authorized to receive any cable royalties on behalf of FIFA.

JSC's Challenges to UNCF and USOC Programs

JSC also requests that the Judges dismiss IPG's claims for telecasts by U.S. stations of the 2000 U.S. Olympic Trials and a telecast by a U.S. station of a 2002 UNCF celebrity golf and tennis tournament. This request is based on the ground that these programs are not compensable under the Phase I Sports category, the category under which IPG seeks compensation, but rather should have been filed under the Phase I Program Suppliers category. See JSC PFFCL at 1-2.

¹⁴ In reaching this conclusion the Judges do not decide whether FIFA owned the copyright to the telecasts of the Soccer Programs for which IPG seeks royalties. The Judges note, however, that the record contains evidence suggesting that FIFA believed that it did not possess the copyright for at least one of those programs. See *Response of the Joint Sports Claimants to Independent Producers Group's Proposed Findings of Fact and Conclusions of Law* at 2, quoting email from M. Dale to R. Galaz (July 10, 2012, 8:29 AM) (JSC Ex. 201 & IPG Ex. 42, at Ex. B, p.4) ("FIFA does not presently know [whether FIFA retained the copyright to the content for the 2002 World Cup or if the copyright was part of the license/assignment to the broadcasters and] is not prepared to represent, or permit anyone else to represent, that it is entitled to retransmission royalties for the period in question"). IPG's continued insistence that FIFA is entitled to copyright royalties for claims on programs that FIFA itself doubts it owns a copyright to supports the Judges' belief that IPG has not acted as FIFA's agent. In light of the Judges' decision to dismiss all claims that IPG filed purportedly on behalf of FIFA based on IPG's lack of authority to act on FIFA behalf, the Judges do not reach a finding with respect to JSC's contentions that such claims should also be dismissed on the grounds that IPG sought royalties for these claims under the wrong Phase I category.

JSC states that the Phase I categories have been developed during the course of a series of litigated proceedings and settlements that stretch back to 1978. *Id.* at 33, ¶ 23. According to JSC, this process culminated in a “Stipulation of the Parties on the Issues of Program Categorization and Scope of Claims” (“Program Category Stipulation”) that the Phase I claimant groups reached in 1996. *Id.* at 34-35.

JSC states that at the commencement of the Phase I proceeding in this matter, the Phase I Parties stipulated to a Phase I and Phase II framework for distributions and “relied on the traditional program category definitions in settling and litigating the Phase I controversies in this proceeding.” *Id.* at 39-40. JSC contends that IPG was aware of these program categories. *Id.* at 40-41.

JSC contends that IPG’s claim for the 2002 UNCF celebrity golf and tennis tournament for which IPG seeks royalties under the Sports category should have been filed under the Program Suppliers category because the tournament involved golf and tennis with celebrity participants, activities, which JSC asserts, are outside the Sports category. *Id.* at 49, ¶ 49. JSC contends that the same is true for the 2000 USOC Olympic Trials for which IPG also seeks royalties under the Sports category. JSC contends that non-network broadcasts of the Olympics, although rare, are compensable, if at all, only under the Program Suppliers category. *Id.* at 51. JSC asserts that the same is true for Olympic Trials.

JSC represents that the Program Suppliers do not dispute JSC’s asserted categorization with respect to either the golf and tennis program or the Olympic trials. *Id.* at ¶¶ 50-51. Indeed, the Phase I representatives of Program Suppliers and Joint Sports Claimants filed a stipulation with the Judges dated September 24, 2012, in which they attach the 1996 Program Category Stipulation and assert that, (1) the Phase I Parties relied upon the 1996 Stipulation to define the Phase I program categories and (2) nonnetwork telecasts of the UNCF Celebrity Golf and Tennis Tournament and U.S. Olympic trials are compensable, if at all, under the Program Supplier category. *Stipulation Between Phase I Representatives of the Joint Sports Category and Program Supplier Category, Docket No. 2008-2 CRB CD 2000-2003 (Phase II)*. Counsel for the Phase I parties rely upon their own understanding of the content contained in the UNCF and USOC telecasts to reach this conclusion. *Id.* at ¶ 3 (“Our understanding of [the UNCF program] is that this program is a telecast of a charity golf and tennis tournament. If that understanding is correct, to the extent that this program is eligible for compensation under Section 111 of the Copyright Act, the program belongs in the Program Supplier category, not the Joint Sports Category, under the [1996] Stipulation.”) and ¶ 4 (“Our understanding is that [the USOC Olympic Trials programs] are telecasts of U.S. Olympic Trial events (e.g., swimming, track and field). If that understanding is correct, to the extent these programs are eligible for compensation under Section 111 of the Copyright Act, the programs also belong in the Program Supplier category, not the Joint Sports category, under the [1996] Stipulation.”).

IPG opposes JSC’s requests for dismissal of the UNCF and USOC claims because IPG contends that it is not bound by the categories to which the Phase I claimants stipulated. Moreover, IPG contends that the categories are arbitrary, have never been adopted by the Judges or any predecessor tribunal, and IPG did not have adequate notice of such agreements. See *IPG’s Response to the Joint Sports Claimants’ Proposed Findings of Fact and Conclusions of Law in Connection with the Joint Sports Claimants’ Motion to Dismiss IPG Claims for Programs Not Within the Sports Claimants’ Programming Category* at 25-26. In addition, IPG contends that even under the categorization to which the Phase I claimant groups purportedly stipulated, the U.S. Olympic Trials telecasts would fall within the Sports category because the telecasts included

diving, equestrian jumping and dressage, women's water polo, and gymnastics, among other activities, which are properly categorized as "sports programming." *Id.* at ¶ 48.

Judges' Analysis of JSC's Request to Dismiss IPG Claims Relating to UNCF and USOC Telecasts

Section 111(d)(4)(A) of the Copyright Act, which sets forth the requirements for filing claims for cable royalties, states: "[d]uring the month of July in each year, every person claiming to be entitled to statutory license fees for secondary transmissions shall file a claim with the Copyright Royalty Judges, in accordance with requirements that the [Judges] shall prescribe by regulation." 17 U.S.C. § 111(d)(4)(A). The applicable regulations of the Judges are contained in 37 CFR §§ 360.1 – 360.5. In addition to the general statutory filing requirement (§ 360.1), the regulations specify the time of filing (§ 360.2), the form and content of claims (§ 360.3), delivery methods to assure compliance with statutory dates (§ 360.4), and the number of copies of claims (§ 360.5).

JSC does not directly assert that IPG's claims regarding the UNCF and USOC programs violated either Section 111 of the Copyright Act or any of the Judges' regulations promulgated under that section. Rather, JSC contends that the Judges should dismiss IPG's claims because IPG failed to state the proper claimant category under which its claims should be considered for compensation based on the 1996 Program Category Stipulation.

While the Phase I parties have stipulated that the 1996 Stipulation categories were relied upon to define the Phase I program categories in Phase I of the current proceeding, the Judges have been clear that such categorization is not the result of any determination by the Judges. It is rather a framework and categorization that the Phase I parties have "accepted" from time to time on a proceeding by proceeding basis. See *JSC Ex. 202*, quoting colloquy between former Chief Judge Sledge and counsel for Phase I claimants).

Even assuming for the sake of argument that the 1996 Stipulation had the force of law, it in no way purports to provide a grounds for dismissing any claim, much less a Phase II claim, that purportedly was miscategorized. By its terms, the 1996 Stipulation was intended to address a CARP panel concern regarding "the extent to which Phase I claims are being prosecuted by fewer than all of the claimants whose programs are included within the Phase I program category." 1996 Stipulation at 1. With respect to Phase II disputes, the 1996 Stipulation states that:

[t]he final distribution of royalties to individual claimants whose programs are within each category will follow either a settlement among all claimants within the category or the resolution of any disputes through a separate Phase II proceeding. The extent to which the particular Phase I party actually represents the ultimate interests of each and every claimant within the category has historically been addressed, if necessary, in Phase II.

Id. at 3.

Given that neither the Copyright Act nor the Judges' rules require that a claim be categorized pursuant to the 1996 Stipulation, the Judges have no legal basis upon which to grant JSC's request to dismiss the UNCF and USOC claims on the ground of miscategorization. The judges, therefore, **DENY** JSC's request.¹⁵

¹⁵ The Judges defer any decisions on how much compensation, if any, such claims should receive. See *Order Denying Motions to Intervene and to Submit Comments*, Docket No. 2008-2 CRB CD 2000-2003 (Phase II) at 2 (Jan. 8, 2013) ("the Judges are not considering, at this stage of the proceeding, the definition of program categories and the placement of particular programs within those categories. Rather, the Judges

IPG CHALLENGES TO SDC CLAIMS

IPG requests that the Judges dismiss several SDC claims based on various grounds. In particular, IPG challenges the following claim numbers by year:

claim year 2000: claims 132, 300, 303, 308, 402, and 487
claim year 2001: claims 424, 428, 429, 433, 438, and 478
claim year 2002: claims 37, 211, 234 (and 234 amended), 236, and 243
claim year 2003: claim 88.

Background

To qualify for a distribution of cable royalties under Section 111 of the Copyright Act, a claimant must be one of the three types of copyright owners specified in Section 111(d)(3)(A) through (C) of that Act. These categories are copyright owners whose work was included in: (A) a secondary transmission made by a cable system of a non-network television program in whole or in part beyond the local service area of the primary transmitter; (B) a secondary transmission identified in a special statement of account deposited under Section 111(d)(1)(A) of the Copyright Act; (C) non-network programming consisting exclusively of aural signals carried by a cable system in whole or in part beyond the local service area of the primary transmitter of such programs.

Every person claiming to be entitled to statutory license fees for secondary transmissions for a given year shall file a claim with the Judges during the month of July the following year in accordance with requirements that the Judges prescribe by regulation. See Section 111(d)(4)(A) of the Copyright Act. The Judges' rules are set forth in 37 CFR 360 et sec. The regulations require, among other things, that the claims include "[a] general statement of the nature of the copyright owner's work or works, and identification of at least one secondary transmission by a cable system of such work or works establishing a basis for the claim." 37 CFR 360.3(b)(1)(ii) (for single claims) and (b)(2)(iii) (for joint claims).¹⁶

Claim 132 from 2000

IPG challenges SDC's claim 132 from 2000, asserting that it was filed by Oral Roberts Evangelical Association for the program "Miracles Now" broadcast by WWL on July 9, 2000. IPG alleges that the program was not broadcast on television station WWL during 2000. IPG represents that the only evidence in the record with respect to "Miracles Now" was that it was scheduled for or was broadcast by WGN at some point between January 2 and July 31, 2000. IPG PFFCL Opposing SDC's Claims at ¶¶ 30-36.

SDC does not directly dispute IPG's assertion that there is no evidence that "Miracles Now" was broadcast in 2000 over WWL, as claim 132 states. See SDC PFFCL at ¶ 118. SDC counters, however, that "the 'Miracles Now' Television log for Fiscal Year 2000 (August 1, 1999-July 31, 2000) maintained by Oral Roberts Evangelical Association shows 'Miracles Now' as having been

currently are examining challenges to the validity of specific claims and whether those claims are eligible for any royalty distribution").

¹⁶ For a discussion of the origin of the requirement to list at least one secondary transmission, see 59 FR 63025, 63028 (adopting requirement to identify "at least one secondary transmission for each joint claim, as opposed to at least one for each joint claimant") ("[a]pparently, while a reading of the [Copyright Royalty Tribunal's] rules indicated that there may be [a requirement that each joint claimant identify a secondary transmission], in actual practice the Tribunal allowed joint claimants to submit only one secondary transmission of a copyrighted work belonging to one of the joint claimants as establishing a basis for a claim for all of the joint claimants.").

carried by WGN, Chicago, Illinois.” SDC states that WGN was distantly retransmitted in 2000. *Id.* at ¶¶ 120-122.

IPG responds that the exhibit (SDC Exhibit 131) admitted to show retransmission of “Miracle Now” on WGN is inconclusive because the show is only shown to be scheduled for broadcast or having been broadcast at some period between January 2-July 31, 2000.

The “Miracles Now” program log and affidavit of Mr. Bernard are sufficient to establish that the program was distantly transmitted in 2000. The Judges, therefore, **DENY** IPG’s request to dismiss the claim.

Claim 303 from 2000

IPG seeks to strike Claim 303 from 2000, filed by Crenshaw Christian Center for a program called “Ever Increasing Faith” allegedly broadcast on KICU on May 7, 2000. IPG contends that no such program was broadcast on that station in 2000.

SDC offers Exhibit 128, an affidavit and program log maintained by Crenshaw Christian Center identifying “Ever Increasing Faith” as having been broadcast on KICU during 2000. SDC alleges that IPG’s source of the programming information identified the program under a different title, a common industry practice.

Exhibit 128 is sufficient evidence to establish that Ever Increasing Faith was distantly transmitted in 2000. The Judges, therefore, **DENY** IPG’s request to dismiss the claim.

Claim 308 from 2000

IPG seeks to dismiss claim 308 from 2000, alleging that it is filed by RBC Ministries for the program “Day of Discovery” broadcast on KPXE on May 7, 2000. IPG asserts that KPXE was not distantly retransmitted during 2000. IPG PFFCL at ¶¶ 23-24.

SDC contends that since KPXE is not significantly viewed and in an independent station it is a distant signal pursuant to 47 CFR 76.55-56. SDC PFFCL at 31, ¶ 111. In response, IPG contends that SDC’s proposed finding seeks a legal conclusion based on citations to the Code of Federal Regulations and that any such legal conclusion is evident from such citations.

SDC asks the Judges to interpret rules that the Judges do not administer. Moreover, SDC has provided no legal analysis, other than a citation to the Code of Federal Regulations and SDC Exhibit 126 without further explanation. Therefore, the Judges **defer** a determination with respect to Claim 308 from 2000 pending further legal briefing and witness testimony.

Claim 487 from 2000

IPG seeks dismissal of Claim 487 from 2000, alleging that the claim was filed by Family Worship Center Church, Inc. for the program Jimmy Swaggert Telecast broadcast by WGTW on June 11, 2000. IPG contends that WGTW was not distantly broadcast during 2000. IPG PFFCL at ¶¶ 21-22.

SDC contends that WGTW carriage in Warrington Township in the Harrisburg-York-Lancaster market satisfies the requirements under 47 CFR 76.55-56 for distant signal status. SDC PFFCL at ¶ 105. SDC further contends that the program “Jimmy Swagart” was broadcast on WOLO and WDSI in February 2000 and both stations were distantly broadcast in 2000, citing testimony from Ms. Martin. SDC PFFCL at ¶¶ 106-108.

Based on the testimony of Ms. Martin and SDC Exh. 120 the Judges conclude that the Jimmy Swaggert program was distantly transmitted in 2000 on WOLO. The Judges, therefore, **DENY** IPG's request to dismiss claim 487 from 2000.

Claims 424, 428, 429, 433 and 438 for 2001 and Claims 211, 234 (and 234 amended) 236, and 243 for 2002: Claims Relating to Distant Carriage of KTBN

IPG challenges several claims for 2001 (claims 424, 428, 429, 433, 438) and 2002 (claims 211, 234 (and 234 amended), 236, and 243) that relied on the distant retransmission of KTBN but contends that KTBN was not distantly retransmitted during 2001 or 2002. Apparently, KTBN was incorrectly identified as a distant retransmission on a Statement of Account from Charter Communications. IPG PFFCL at ¶¶ 41-47 and 57-62.

SDC contends that KTBN was distantly transmitted and any innocent misidentification of KTBN as having been distantly retransmitted should not result in dismissal of those claims.

SDC witness, Jonda Martin, testified that there was at least one instance of KTBN being distantly retransmitted. In light of her testimony and other evidence in the record showing the confusion over the distant retransmission of KTBN in 2001 and 2002, the Judges **DENY** IPG's requests to dismiss claims 424, 428, 429, 433, and 438 for 2001 and claims 211, 234 (and 234 amended) 236, and 243.

Claim 37 from 2002

IPG challenges this claim, stating that it was filed by In Touch Ministries, Inc, relied on program "In Touch" and cited broadcast by KTTV on July 7, 2002. IPG asserts that KTTV was not distantly retransmitted during 2002. SDC opposes the request on various grounds, including that (1) the program referenced in Claim 37 (which allegedly goes by various names) was "broadcast on about 270 televisions [sic] in or about July 2002." Moreover, "[i]n July 2002 that program was broadcast on KTTV, KRON, WFMZ, and WCPX, among other television stations. In February 2002 that program was broadcast on WXIA and WRDW." SDC PFFCL at ¶ 164. In addition, SDC states that KTTV was a distant signal on numerous cable systems in California. SDC's Erratum to their PFFCL at ¶¶ 166-170.

Because evidence in the record shows that KTTV was distantly retransmitted for 2002, the Judges **DENY** IPG's request to dismiss Claim 37 from 2002.

Claims With Erroneous Dates

IPG challenges four claims because the program listed in the claim did not air on the exact date stated in the claim (*i.e.*, Claims 300 and 402 from 2000; Claim 478 from 2001; and Claim 88 from 2003). *IPG PFFCL In Connection with IPG's First Motion to Strike Claims Appearing in the Written Direct Case of the Settling Devotional Claimants* at ¶¶ 37-40; 55-56; and 75-76.

SDC argues that these are immaterial errors and should not result in dismissal of the claims.

The Judges **DENY** IPG's requests to dismiss Claims 300 and 402 from 2000; Claim 478 from 2001; and Claim 88 from 2003 because the errors in the broadcast dates were immaterial.

ORDER

IPG's motions to strike proposed findings and conclusions of other parties is **DENIED**. The Judges did not request and did not consider the motions, responses, or replies.

The Judges **GRANT** and **DENY**, as indicated in this Order and in the detail on the Exhibits to this Order, the challenges by the participants in the preliminary hearing. The Judges' present determination of the existence of a facially valid agreement is not dispositive of the terms or conditions of any such agreement. Except as detailed in this Order, the Judges do not look behind the facial validity of any timely filed claims; nor do the Judges look behind the evidence establishing the existence of a representation agreement between IPG and the various claimants whose claims the Judges have allowed. As IPG's claims were duly filed and contained the certification required by the Judges' regulations, the Judges, except as otherwise detailed in this Order, accept them as having been properly filed.

With regard to SDC's objection relating to the Billy Graham claims filed by IPG, the Judges **ORDER** IPG to issue a letter to BGEA's chief legal officer stating that within 30 days of receipt of the letter BGEA must inform the CRB in writing whether it intends to continue to pursue its cable claims for 2002, 2003, and 2004, and if so, identify its authorized representative. IPG's letter to BGEA must clearly state that although it may choose for IPG to represent it before the Judges, it is under no obligation to do so. All correspondence between IPG and BGEA relating to IPG's continued representation of BGEA in this proceeding must be filed with the CRB.

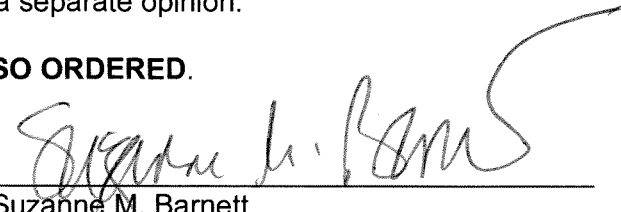
With respect to Claim 308 from 2000, the Judges **ORDER** that no later than seven calendar days after the date of this order SDC file with the Judges a fully briefed motion in support of its position that the claim should not be dismissed. Such motion shall be no longer than five pages. The Judges **ORDER** that IPG shall file a response no later than five calendar days after SDC's motion is filed. Such response shall be no longer than three pages.

The Judges are prepared to move forward with the Phase II proceedings in this matter. If further hearing is required, the Judges will not, at or after that hearing, consider any portions of the parties' respective Written Direct Statements relating to any claims that are denied in this Order. Further, the Judges will not hear any testimony or review any further exhibits relating to the denied claims. The Judges do not request and will not accept revised Written Direct Statements from the parties, relying instead on their respective abilities to filter admissible from inadmissible material.

The Judges **ORDER** the parties to this proceeding to confer within the next ten business days regarding the length of their respective presentations and a suitable schedule for hearing dates. Not later than 20 calendar days following the date of this Order, each party shall submit to the Judges and to each other party a complete witness list, disclosing for each witness: name, contact information (contact through counsel is acceptable), and a *brief* statement of the substance of the witness's anticipated testimony. Each party shall include on the witness list a good faith estimate of the time required for direct examination of each of that party's witnesses. After reviewing one another's time estimates, the parties shall again confer and propose to the Judges at least two alternative date ranges during which all counsel and witnesses are available or can be made available.

*Judge Roberts did not join the decision and will file a separate opinion.

SO ORDERED.


Suzanne M. Barnett
Chief U.S. Copyright Royalty Judge

DATED: March 21, 2013

EXHIBIT A

Claims (marked with "X") for which IPG is not pursuing royalties
by stipulation with MPAA

| CLAIMANT NAME | 2000 | 2001 | 2002 | 2003 |
|---|-------------|-------------|-------------|-------------|
| Adler Media | | X | | X |
| America's Black Forum | | X | X | X |
| Best Direct (International) Ltd. | X | X | X | X |
| Beyond International | | X | X | X |
| Bloomberg Television | | X | X | X |
| Canamedia Productions, Ltd. | | X | X | X |
| Candid Camera, Inc. | | X | X | X |
| Enoki Films | | | X | X |
| Envoy Productions | X | | X | X |
| Fitness Quest, Inc. | X | | X | X |
| Granada Media International | | X | X | X |
| GRB Entertainment | | X | X | X |
| Healthy TV, Inc. | X | X | | |
| IWV Media Group | X | X | | |
| Kid Friendly Productions | | X | X | X |
| Lacey Entertainment | | | X | X |
| Mustang Marketing, Inc. | | X | X | X |
| Nelson Davis Productions | X | X | X | |
| NTS Program Sales | | X | X | X |
| Nu/Hart Hair Clinics, Inc. | | | X | X |
| <i>Production du Verseau aka Les Productions du Verseau</i> | | X | X | X |
| RCN Television | X | X | X | |
| Red Apple Entertainment (cka Frantic Films) | X | | | |
| Seen on TV dba As Seen on TV | X | | | |
| Simply Fishing, Inc. | X | | | |
| Stilson & Stilson | | X | X | X |
| St. Jude Children's Hospital | | | | X |
| Tempur Pedic, Inc. | X | | X | X |
| TF1 International | | X | X | X |
| Thump Records | X | | X | X |
| Unapix Entertainment, Inc. | | X | X | X |
| Uniworld Group | | X | X | X |
| Urban Latino TV LLC | X | | | |
| Venevision International | X | | X | X |
| Video Professor, Inc. | | X | X | X |
| Worldwide Pants, Inc. | | | | X |
| Zebby's Zoo | X | | | X |

EXHIBIT B

MPAA Claim Objections

| Claimant | MPAA Objection | IPG Response | Judges' Ruling |
|--|---|---|--|
| Adler Media | Denial by Principal | Denied. 2011 email identifies Adler titles to IPG | All IPG claims filed on Adler Media's behalf dismissed. September 2002 termination letter applied to all representation and claims past and future. Termination of authority preempts later identification of titles by email. |
| Advantage Media Group | Unexecuted Agreement insufficient to establish IPG's authority. | Irrelevant; filing in July confirms authority to do so; other documents confirm agency | Claims dismissed; evidence insufficient to establish IPG's authority. |
| America's Black Forum cka New Millenium Media Partners | No Rep Agreement; agreement is with Uniworld Group for 2000 | Denied; filed claim for 2000; not pursuing claim for 2001-03 | 2000 claim allowed; Mandate Agreement with Uniworld names America's Black Forum. |
| Anheuser-Busch Companies, Inc. | Fintage Publishing represents Anheuser-Busch and not IPG. Fintage terminated its relationship with IPG. | IPG, through Galaz's uncorroborated testimony only, disputes Fintage's authority to represent Anheuser-Busch. | Claims dismissed. September 2002 notice to CARP of termination of authority by Fintage Publishing and Collection, B.V. IPG offered insufficient evidence to show its authority to represent Anheuser-Busch. |
| Atlantic Film Corporation | No Representation Agreement; agreement is with Beckmann International for 2000 | Denied; Beckmann claims to represent AFC in Extension Agreement | 2000 claim dismissed because Atlantic Film Corporation was not linked in any way to the Beckmann agreement; later claims allowed because Beckmann extension agreement makes the link. |

| Claimant | MPAA Objection | IPG Response | Judges' Ruling |
|--|--|---|---|
| Aviva International cka DAS Entertainment | No Representation Agreement; agreement is with Image Entertainment | Denied; Agreement with Image asserts ownership of Aviva; email evidence of DAS as successor to Aviva. Ex. ## 419, 420 | 2001-03 claims allowed; 2001 agreement is for Canadian retransmissions "for all relevant periods"; 2000 claim dismissed for insufficient evidence of authority for that year. |
| Beyond International | Denial by Principal | Pursuing claim for 2000 only | Claims dismissed for insufficient evidence of IPG's authority to represent Beyond International. September 2002 notice to CARP of termination of authority by Fintage Publishing and Collection, B.V. |
| C/F International | Denial by Principal | IPG, through Galaz's uncorroborated testimony only, disputes Fintage's authority to represent CF International. | Claims dismissed. September 2002 notice to CARP of termination of authority by Fintage Publishing and Collection, B.V. and insufficient evidence of IPG's authority to represent C/F International. |
| CCI Entertainment | No Representation Agreement | Denied; Annette Frymer agreement is for CCI; 2002 Extension Agreement is signed by/for CCI | 2000 claim dismissed. Frymer agreement dated 10/15/2001 names claimant only as "Claimant" for 2000; 2001-03 claims allowed. |
| Cogeco Radio-Television | No Representation Agreement; Cogeco filed a joint claim in Canadian Claimants group for 2000 | Denied; extension agreement is sufficient | 2000 claim dismissed for insufficient evidence of authority; later claims allowed. |
| David Finch Distribution Ltd. fka David Finch Associates | Denial by Principal | IPG, through Galaz's uncorroborated testimony only, disputes Fintage's authority to represent David Finch. | Claims dismissed. September 2002 notice to CARP of termination of authority by Fintage Publishing and Collection, B.V. and insufficient evidence of IPG's authority to represent David Finch. |

| Claimant | MPAA Objection | IPG Response | Judges' Ruling |
|--------------------------------|--|---|---|
| Enoki Films | No Representation Agreement | Denied; evidence is agreement for 1999 funds. IPG letter indicates not receiving agreement for 2000 funds. | Claims dismissed for insufficient evidence of IPG's authority. |
| Entertainment Rights PLC | Unexecuted Agreement insufficient to establish IPG's authority. | Irrelevant; filing in July confirms authority to do so; email stating no executed agreement in hand; claimant did not deny agency | Claims dismissed. Self-serving email is insufficient to establish authority. |
| Envoy Productions | No valid agreement | Denied; claim filed for 2001; agreement dated July 2002 states it is for 2000 funds | Claim dismissed. Agreement is not timely and is for 2000 only. |
| Filmline International Inc. | Denial by Principal | IPG, through Galaz's uncorroborated testimony only, disputes Fintage's authority to represent Filmline. | Claims dismissed. September 2002 notice to CARP of termination of authority by Fintage Publishing and Collection, B.V. and insufficient evidence to show IPG's authority to represent Filmline. |
| France Animation aka Moonscoop | Unexecuted Agreement insufficient to establish IPG's authority. | Irrelevant; filing in July confirms authority to do so; other documents confirm agency | Claims dismissed. Insufficient evidence of IPG's representation authority. |
| Freewheelin' Films, Ltd. | No Representation Agreement; signatory is New Visions Syndication | Denied; agreement with New Visions Syndicate is for Freewheelin'. | Claims dismissed; no connection established between Freewheelin' Films and New Visions. |
| Gabriel Associates | No Representation Agreement; agreement relates only to 1999 | Denied; produced fax with title registration information. | Claims dismissed. A list of titles does not suffice to show IPG's authority. |
| Healthy TV, Inc. | No valid agreement; agreement with Maureen Millen & Companies dated 2002 | Agreement with interlineations by R. Galaz; Feb. and Mar. 2012 email naming "Searchlight Entertainment". | Claims dismissed. No connection between Millen and Healthy TV, Inc. only a program with "healthy" in the title. |
| InCA Productions | No Representation Agreement | Denied; Beckmann claims to represent InCA in Extension Agreement | 2000 claim dismissed; later claims allowed. |

| Claimant | MPAA Objection | IPG Response | Judges' Ruling |
|-----------------------------------|--|--|--|
| IWW Media group | No Representation Agreement; agreement with Maureen Millen & Companies | Denied; agreement with interlineations by R. Galaz; Feb. and Mar. 2012 email naming "Searchlight Entertainment". | Claims dismissed for insufficient evidence of IPG's authority. |
| Jay Ward Productions, Inc. | Denial by Principal | Galaz's uncorroborated testimony contending that IPG was the rightful representative; no documentation provided.. | September 2002 termination letter for all claims beginning with 1999 (cable), 2000 (satellite), 2001 (international) |
| Kid Friendly Productions | No U.S. Authority | Conceded | Claim(s) dismissed. |
| King Motion Picture Corporation | No Representation Agreement | Denied; extension agreement is sufficient | Claims dismissed. Extension agreement lacks essential terms and King filed with Canadian group in 2000. |
| Lacey Entertainment | No U.S. Authority; collateral estoppel | Denied. 1997 CARP holding no longer applies; no evidence that claimant does not want IPG to act as agent. | Claims dismissed. IPG concedes no claim for 2002 and 2003. July 1999 letter denying representation for U.S. and Canada funds; February 2001 letter confirming. |
| Mansfield Television Distribution | Denial by Principal | IPG, through Galaz's uncorroborated testimony only, disputes Fintage's authority to represent Mansfield Television. | Claims dismissed. September 2002 notice to CARP of termination of authority by Fintage Publishing and Collection, B.V. and insufficient evidence to show IPG had authority to represent Mansfield. |
| New Dominion Pictures | Denial by Principal | IPG, through Galaz's uncorroborated testimony only, disputes Fintage's authority to represent New Dominion. | Claims dismissed. September 2002 notice to CARP of termination of authority by Fintage Publishing and Collection, B.V. and insufficient evidence to show IPG had authority to represent New Dominion. |

| Claimant | MPPA Objection | IPG Response | Judges' Ruling |
|------------------------------------|--|---|---|
| NTS Program Sales | No claim filed for 2001 – 03 | IPG not pursuing claim for 2000-02. | Any IPG claim is dismissed; lack of evidence of claim and/or authority. |
| Nu/Hart Hair Clinics, Inc. | Unexecuted Agreement insufficient to establish IPG's authority. | Irrelevant; filing in July confirms authority to do so; other documents confirm agency | Claims dismissed. Self-serving letter forwarding unexecuted agreement is insufficient to establish contract. |
| NVC Arts | Unexecuted Agreement insufficient to establish IPG's authority. | Irrelevant; filing in July confirms authority to do so; other documents confirm agency; evidence consists of unsigned agreement for 1999 funds. | Claims dismissed for insufficient evidence of IPG's authority. |
| O. Atlas Enterprises | Denial by Principal | Galaz's uncorroborated testimony contending that IPG was the rightful representative; no documentation provided. | September 2002 termination and letter for all representation and claims past or future. |
| Passport International Productions | Denial by Principal | IPG, through Galaz's uncorroborated testimony only, disputes Fintage's authority to represent Passport International. | Claims dismissed. September 2002 notice to CARP of termination of authority by Fintage Publishing and Collection, B.V. and insufficient evidence to show IPG had authority to represent Passport International Productions. |
| Planet Pictures | Unexecuted Agreement insufficient to establish IPG's authority. | Irrelevant; filing in July confirms authority to do so; other documents confirm agency | Claims dismissed. Self-serving letter forwarding unexecuted agreement is insufficient to establish contract. |
| Psychic Readers Network | No valid agreement; agreement with Tide Group, Inc. inconclusive; entity addresses do not match. | Filed claims under both names: Tide 2000-03, RN 2001-03 | Claims dismissed. Evidence insufficient to establish authority. |

| Claimant | MPAA Objection | IPG Response | Judges' Ruling |
|---|---|--|--|
| Questar, Inc aka Questar Video | Denial by Principal | IPG, through Galaz's uncorroborated testimony only, disputes Fintage's authority to represent Questar. | Claims dismissed. September 2002 notice to CARP of termination of authority by Fintage Publishing and Collection, B.V. and insufficient evidence to establish IPG's authority to represent Questar. |
| RCN Television, S.A. Sandra Carter Productions | No Representation Agreement Denial by Principal | Conceded Evidence consisted of inconclusive correspondence and Galaz's uncorroborated testimony only. | Claim dismissed. July 25, 2002 termination letter for all representation and claims past and future. |
| Sarrazin Couture Productions | No Representation Agreement; agreement is with "The City Productions Inc." | Denied; agreement with The City Productions is for Sarrazin. | Claims dismissed. Evidence of agreement is insufficient; no mention of Sarrazin in 2001 agreement; Sarrazin agreement lists only 1998 transmissions; September 2002 notice to CARP of termination of authority for The City Productions by Fintage Publishing and Collection, B.V. |
| Scholastic Productions | No Representation Agreement; April 2012 letter denying authority | Denied; no evidence presented. | Claims dismissed for insufficient evidence of IPG's authority. |
| Sullivan Entertainment | Denial by Principal | Denied; Galaz's uncorroborated testimony only. | Claims dismissed. September 2002 notice to CARP of termination of authority by Fintage Publishing and Collection, B.V. and insufficient evidence of IPG's authority to represent Sullivan. |

| Claimant | MPAA Objection | IPG Response | Judges' Ruling |
|---|---|--|--|
| TEAM Communications Group aka TEAM Entertainment Group | Denial by Principal | Denied; Galaz's uncorroborated testimony only. | Claims dismissed. September 2002 notice to CARP of termination of authority by Fintage Publishing and Collection, B.V. |
| TF1 International | Denial by Principal | Denied; Galaz's uncorroborated testimony only. | Claims dismissed. September 2002 notice to CARP of termination of authority by Fintage Publishing and Collection, B.V. |
| Unapix Entertainment, Inc. | No Representation Agreement | Filed for 2000-01 only; not pursuing claim for 2001. | Claim dismissed; evidence insufficient to establish IPG's authority. |
| Vivavision fka Productions JBM, Inc. | Unexecuted Agreement insufficient to establish IPG's authority. | Irrelevant; filing in July confirms authority to do so; claimant did not deny agency | Claims dismissed. Self-serving letter forwarding unexecuted agreement is insufficient to establish contract. |
| Zebby's Zoo Productions, Inc. | No Representation Agreement | Denied | Claims dismissed. No evidence of representation authority. |

"No Rep Agreement" means IPG did not produce a written agreement to act as agent for the claimant.

"Unexec Agreement" means the document/s IPG produced were not signed by the claimant and/or IPG.

"No U.S. Authority" means the claimant did not authorize IPG to collect royalties for transmissions in the United States.

"Denial by Principal" means the claimant, directly or through counsel, notified the Copyright Office or IPG or both that the claimant did not intend or did not intend to continue the fiduciary relationship of principal and agent with IPG and directing IPG to cease representation.

UNITED STATES COPYRIGHT ROYALTY JUDGES
The Library of Congress

In re

**Distribution of 1998 and 1999 Cable
Royalty Funds**

**Docket No. 2008-1 CRB CD 98-99
(Phase II)**

**RULING AND ORDER REGARDING CLAIMS
and Separate Opinion**

The captioned proceeding involves final distribution of royalty funds deposited by cable service operators (CSOs) for the right to retransmit over-the-air television broadcasts during calendar year 1999.¹ This Ruling and Order pertains to preliminary issues raised by the participants that must be resolved prior to that final distribution.

The substantive issues before the Copyright Royalty Judges (Judges) are the eligibility of Worldwide Subsidy Group LLC dba Independent Producers Group (IPG) to participate in this proceeding and the validity of the claims that IPG asserts to a share of the funds allocated previously to the category of programs referred to as “Devotional Programs.” All other claimants to the Devotional Programs funds reached a settlement with other program categories for allocation of a share of the 1999 cable royalty funds. These “Settling Devotional Claimants” (SDC) now challenge on several grounds IPG’s participation as well as the claims to a portion of the Devotional Programs funds asserted by IPG.

The Judges presided at a two-day hearing on May 5 and 6, 2014 (the Preliminary Hearing). Based on the evidence the parties presented at that hearing and their written submissions, the Judges **DENY** the SDC’s motion to have IPG dismissed from this proceeding. The Judges **DISMISS** the following IPG claims for reasons discussed *infra*: Adventist Media Center Productions and Feed the Children, Inc. IPG may continue to pursue its remaining claims.

I. BACKGROUND

Twice each year, CSOs deposit with the Copyright Office royalties accrued for the retransmission of television programming outside the broadcast station’s local area. Every year during the month of July, copyright owners file claims for the funds on deposit for the preceding calendar year’s retransmissions. On motion of a claimant or *sua sponte*, the Judges publish notice of the commencement of proceedings to distribute those royalty funds.

¹ All claims to 1998 royalties have been resolved and the funds have been distributed. The matter is currently on appeal to the U.S. Court of Appeals for the District of Columbia Circuit. *Ind. Producers Group v. Librarian of Congress*, No. 13-1132 (D.C. Cir. argued March 25, 2014).

Copyright owners, through their representatives, asserted claims to the 1999 cable retransmission royalties in a bifurcated proceeding. In Phase I of the proceeding, the issue was the allocation of the funds among categories of claimants. In Phase II of the proceeding, the Judges' task is to distribute the funds to or on behalf of individual claimants within each category.

Pursuant to earlier proceedings and determinations, the Judges (or their predecessors) authorized distribution of all 1999 cable royalty funds except a portion of those allocated to the Devotional Claimants (Devotional) category. The captioned distribution proceeding shall resolve all remaining issues regarding distribution of the 1999 Devotional funds.

II. ISSUES PRESENTED

IPG filed claims in July 2000 for over 170 claimants.² In this final Phase II distribution proceeding, IPG identified six of those claimants (and 26 program titles) that IPG asserts are entitled to a portion of the Devotional funds.³ The SDC challenges the claims asserted by IPG and challenges IPG's right, in general, to receive any of the 1999 cable royalty funds in the Devotional category, asserting: *i*) IPG filed a fraudulent claim in this proceeding and it should not, therefore, be permitted to participate in the distribution, *ii*) IPG committed misconduct by entering into a "finder's fee" or "illegal kickback" agreement with counsel for some of its claimants, *iii*) IPG committed fraud before the Judges' predecessor body and it should not, therefore, be permitted to appear before this tribunal in any proceeding; *iv*) IPG disavows agency status with regard to the claimants for whom it asserted claims and IPG is not an assignee of the claimants' copyrights leaving IPG without standing to participate in this proceeding; and *v*) IPG named claimants whose entity status, and therefore, ownership interest, were uncertain, rendering the claims "improper."

An additional issue arises with respect to the SDC's conduct in preparing their case for the Preliminary Hearing. As part of the effort to substantiate their arguments for IPG's exclusion from this proceeding, the SDC twice sought subpoenas for documents and testimony (the first request was withdrawn before the Judges ruled on it). The Judges denied the SDC's motion for subpoenas, *see Order Denying SDC Request to Issue Subpoenas* (Apr. 3, 2014), and the SDC moved the Judges to "request" documents and testimony. In granting that motion, the Judges specified that each request be "clearly marked on the first page in bold and capital letters that it is a request and not a subpoena." *Order Granting in Part SDC Motion for Request for Additional Evidence*, at 5 (Apr. 25, 2014). The SDC failed to do so, in flagrant disregard of the Judges' Order. The Judges view this as a bald attempt by the SDC to mislead witnesses into believing that they had been commanded to appear by the Judges. But for the fact that all but one of the witnesses sought by the SDC were on IPG's witness list, the Judges would have declined to consider any testimony derived from these requests. The Judge's treatment of the testimony of Jan Harbour as a result of the SDC's misconduct is discussed, *infra*.

² See 1999 Cable Royalty Claims no. 433, 434 filed by Worldwide Subsidy Group and IPG, respectively.

³ See Exhibits 1, 2 to IPG Written Direct Statement (Nov. 30, 2013).

III. ANALYSIS

A. The Impact of IPG's Past Fraud and Alleged Current Fraud on its Participation in this Proceeding

1. Alleged IPG Misconduct

a. Filing a False Claim

The SDC argue that misconduct by Raul Galaz should render IPG ineligible to participate in distribution proceedings before the Judges. Alternatively, the SDC contend that IPG's claims in this proceeding should be dismissed as a result of Mr. Galaz's alleged misconduct. At the very least, the SDC urge the Judges to deprive IPG of the benefit of any presumption of validity with regard to IPG's assertion that it represents the claims and claimants identified in and through its Petition to Participate in this proceeding.

The misconduct falls into two categories: The first category pertains to the *admitted* fraudulent and criminal conduct of Mr. Galaz *in prior proceedings*. The second category pertains to IPG's *alleged* fraudulent and other wrongful conduct in *this proceeding*.

Mr. Galaz previously admitted to criminally defrauding the Copyright Office, claimants, and other participants *in past proceedings* in order to obtain for himself cable retransmission royalties that rightfully were the property of other persons and entities. *See generally* Exh. SDC-P-003 (Information, *U.S. v. Galaz*). Among the criminal acts to which Mr. Galaz admitted was the use of two aliases, "Tracee Productions" and "Bill Taylor," to obtain cable television retransmission royalties to which neither he nor IPG was entitled.⁴ Exh. SDC-P-004, at 3 (Galaz Plea Agreement). By the artifice of his fraud, Mr. Galaz received over \$325,000 in royalty funds to which he was not entitled from the portion of the fund allocated to the Program Suppliers category. Exh. SDC-P-003, at 5 (Information, *U.S. v. Galaz*).

In *this proceeding*, the undisputed evidence revealed that IPG also filed a claim on behalf of Tracee Productions. However, Mr. Galaz testified that IPG's filing of a claim for Tracee Productions in this proceeding was not improper and that IPG never pursued the claim. Specifically, he testified that Tracee Productions was a legitimate business entity founded by another individual, Mr. Francisco Dias, which had acquired rights to claim cable retransmission royalties for several motion pictures. *See, e.g.*, 5/5/14 Tr. at 32, 246-48 (Galaz). Mr. Galaz further testified that the reason IPG did not pursue claims on behalf of Tracee Productions (beyond filing the claim in July 2000) was that he determined that the motion pictures in question had never been televised in the United States. *Id.* at 248-50.

The Judges do not find Mr. Galaz's testimony in this regard to be credible.⁵ While Mr. Galaz asserts that Tracee Productions is a legitimate entity created by a third party (Francisco

⁴ The claims Mr. Galaz asserted on behalf of Tracee Productions sought royalty funds from the Program Suppliers category, not the Devotional category at issue in this proceeding.

⁵ The Judges discussed Mr. Galaz's credibility at length in the Final Determination in the 2000-2003 cable distribution proceeding. *See Distribution of the 2000, 2001, 2002 and 2003 Cable Royalty Funds*, Docket No. 2008-

Dias, an unindicted alleged coconspirator in the fraudulent scheme for which Mr. Galaz was incarcerated⁶), his testimony is uncorroborated and inconsistent with other evidence in the record. “Francisco Dias” is identified as an alias for Mr. Galaz in the Information that the government filed in his criminal case. Exh. SDC-P-003, at 5. *See also Galaz v. Jackson*, No. BC302194 (LA County Super. Ct. March 16, 2006) (describing “Francisco Dias” as an alias for Mr. Galaz). Mr. Dias’s mailing address, according to a copy of a fictitious business name filing, was the same as that of “Bill Taylor,” the alias Mr. Galaz admitted using to perpetrate the prior fraud that resulted in his criminal conviction. Exh. SDC-P-033. In explaining the absence of a written representation agreement, Mr. Galaz himself testified that an agreement between IPG and Tracee Productions would have been “effectively between myself and myself.” 5/5/2014 Tr. at 65 (Galaz). Further, there is no evidence or testimony to corroborate Mr. Galaz’s claim that Tracee Productions held rights to any works during the 1998-99 retransmission period at issue, in July 2000 when IPG filed its claim, or any other time. This undermines Mr. Galaz’s explanation for why IPG filed a claim for Tracee Productions in July 2000 (before Mr. Galaz’s fraud came to light) but did not seek to recover royalties on that claim when IPG filed its petition to participate in this proceeding in 2008 (several years after Mr. Galaz’s conviction)⁷.

Based on the foregoing, the Judges find that IPG’s joint claim filed with Tracee Productions in this proceeding was not valid. IPG’s decision not to pursue the Tracee Productions claim in this proceeding does not excuse the original misconduct. Nor does it obviate the damage done to the integrity of the distribution process in this proceeding. Rather, IPG should have timely and affirmatively withdrawn the claim to eliminate the taint of fraud associated with its claims on behalf of Tracee Productions. The question before the Judges, then, is whether this misconduct compels the Judges to take any of the extraordinary actions urged on them by the SDC as a remedy. The Judges conclude that, under the current circumstances, it does not.

b. “Finder’s Fee” or “Illegal Kickback”

On June 7, 2000, IPG entered into an agreement with the Texas law firm Brewer, Brewer, Anthony & Middlebrook (BBAM). *See* Exh. SDC-P-013 (finder’s fee agreement). The SDC characterize the agreement concerning payment of a “finder’s fee” by IPG to BBAM for securing royalty claimants as an “illegal kickback” arrangement. Based on that agreement, the SDC seek IPG’s disqualification for its “unethical treatment of its clients.” *SDC Prehearing Memorandum of Law on Claims Issues*, at 7-9 (April 16, 2014) (SDC Memo). In support of this position, the SDC cite to Opinion 536 of the Texas Commission on Professional Ethics, Op 536, V. 64 Tex. B.J. 7 (2001), to demonstrate that such an arrangement violates the ethical rules for attorneys in the state of Texas.

2 CRB CD 2000-2003 (Phase II), 78 FR 64984, 65000 (Oct. 30, 2013). Mr. Galaz remains problematic as a witness for the reasons articulated in that decision.

⁶ See 5/5/14 Tr. at 56-58 (Galaz).

⁷ If IPG asserted a claim on behalf of Tracee Productions for cable royalties for retransmissions occurring during 1998 and 1999, the claim would not have been asserted in the Devotional Program category. IPG filed its Petition to Participate in this Phase II proceeding in 2008. Issues between IPG and the Program Suppliers category of claimants were resolved fully as part of the settlement between MPAA and IPG that occurred in 2003. The only issue the Judges now examine is whether the *filing* of the claim was sufficient fraud or misconduct to disqualify IPG from pursuing claims on behalf of other entities in the Devotional category.

Whether the June, 2000 agreement violates the ethical rules for attorneys in Texas is not a matter for the Judges to determine. Even if the Judges were to assume that it was a violation of Texas legal ethics, that violation would not afford a basis for barring IPG from participating in this proceeding. The Judges have no jurisdiction to enforce the rules governing attorneys in Texas and, in any event, IPG is not subject to them. The SDC have failed to articulate any legal basis for the Judges to disqualify IPG or dismiss any of its claims as a result of the June, 2000 agreement.

2. Effect of IPG's filing a fraudulent claim on behalf of Tracee Productions on other claimant-principals represented by IPG

The SDC argue that *all* of IPG's claims in this proceeding should be stricken because of the misconduct described above, based essentially upon their implicit request that the Judges adopt the maxim "*falsus in uno, falsus in omnibus.*" That is, the SDC assert that Mr. Galaz's admitted and alleged misconduct are sufficient to bar all claims as a substantive matter. Balanced against these arguments is the harm that would be visited, through no fault of their own, upon the claimants that IPG represents.

The SDC argue that, as principals, IPG's claimants should be held accountable for the misdeeds of their agent. Under general rules of agency law, a principal is liable when its agent commits unlawful acts in the course of exercising actual or apparent authority within that agency. See *Am. Society of Mechanical Engineers, Inc. v. Hydrolevel Corp.*, 456 U.S. 556, 566 (1982) (*Hydrolevel*). However, more than the mere existence of an agent-principal relationship is required to charge the agent's wrongful acts to the principal. *In re Laymon Berman Walker*, 726 F.2d 452, 454 (8th Cir. 1984); *Arthur Nicholas Hosking*, 89 B.R. 971, 976 (Bankr. S.D. Fla. 1988). Here, these legal principles decidedly do not support the imputation of IPG's wrongful acts regarding Tracee Productions (or regarding other principals of IPG) to the claimant-principals whose claims are challenged by the SDC in this proceeding.

Under general principles of agency, a principal is held accountable only for actions that the agent takes within the scope of actual or apparent authority under the agency. See, e.g., *Hydrolevel*, 456 U.S. at 566 n.5 (*quoting* Restatement (Second) of Agency § 8 (1957)); Restatement (Third) of Agency §§ 7.03, 7.04 (2006). IPG's agreements with its claimants grant IPG authority to file claims on their behalf, but not on behalf of anyone else. IPG did not file a claim for Tracee Productions pursuant to its agreements with any of its claimants. This action was outside the scope of the agency relationship that IPG has with its claimants, and should not be held against those claimants. To hold otherwise would in essence render every principal a guarantor of the good faith of its agent. The Judges are aware of no precedent for such an extreme and inequitable rule, and the SDC have not provided any authority that would support saddling blameless claimants with such a costly, impossible, and ongoing obligation.⁸ See Richard A. Posner, *Economic Analysis of Law* 114 (6th ed. 2003) (When considering principles

⁸ The SDC also argue that the claimant-principals whose claims are contested in this proceeding were on notice (since at least May 2002 when the criminal Information was filed against Mr. Galaz) that their agent had allegedly engaged in fraudulent conduct. However, that fact does not trigger a legal duty on the part of unrelated principals to disassociate themselves from IPG or Mr. Galaz. Indeed, the fact that the District Judge ultimately permitted Mr. Galaz to engage in the business of representing claimants seeking cable and satellite retransmission royalties underscores the absence of such a duty to disassociate.

of agency, “the law ... allocat[es] responsibility to the person who can avoid the mistake at lowest cost”).

On balance, then, the Judges find that it would be unjust to the claimants IPG represents to dismiss those claims wholesale based on IPG’s past misdeed.⁹

3. “Debarment” or Sanctioning of IPG

The SDC argue that IPG should be banned from participating in any proceedings before the Judges as a result of Mr. Galaz’s past crimes and the existence of a false claim in the joint claim that IPG filed in this proceeding. The SDC marshal authorities for the proposition that, as an administrative entity, the CRB has inherent authority to debar entities that seek to do business with it. The SDC have also provided authorities to support the alternative proposition that, as an adjudicative body, the Judges have inherent authority to sanction parties that come before them. Under whichever theory, the SDC urge the Judges to ban IPG from participating in this proceeding and all future proceedings.

As a preliminary matter, the Judges note that the Copyright Act does not grant express authority to debar or sanction participants. The Judges rules are equally silent on the matter. It is not surprising, therefore, that the SDC have sought out case law recognizing inherent authority to debar participants or impose sanctions.

Debarment is the revocation of the privilege of doing business with an administrative agency for a period of time (usually not exceeding three years). The case law is clear that the purpose of debarment is not to punish the third party vendor, but to protect the agency and the public. *See Gonzales v. Freeman*, 334 F.2d 570, 577 (D.C. Cir. 1964); *In re Kirkland*, 1991 HUD BCA LEXIS 3, at *6-*7 (HUD Bd. of Contract Appeals Jan. 14, 1991). Nevertheless, debarment can have a significant negative impact on the third party and may not be imposed without due process consisting, at a minimum, of prior warning and opportunity to come into compliance as well as notice and an opportunity to be heard. *See In re Toussie*, 1980 AGBCA LEXIS 52, at *23-*24 (Dept. of Ag. Bd. of Contract Appeals Sept. 5, 1980). Courts have found the power of debarment to be an inherent authority in administrative agencies. *See Gonzales*, 334 F.2d at 577-78. However, those courts have also required agencies to act in accordance with regulatory procedures when exercising that authority, rather than engaging in “administrative improvisation on a case-by-case basis.” *Id.*

The U.S. Supreme Court has recognized the authority to sanction litigants for misconduct as being inherent in courts. *See Chambers v. NASCO, Inc.*, 501 U.S. 32, 43-44 (1991). Essentially, a court has the power to regulate the conduct of those who appear before it. *Id.* Lower federal courts have found that this authority is not exclusive to Article III courts, but may reside in Article I courts and other adjudicatory bodies. *See In re Bailey*, 182 F.2d 860, 864-65

⁹ The cases cited by the SDC regarding frauds on the Copyright Office committed by a party *on its own behalf* (rather than as an agent) are inapposite. Also, the SDC’s argument that the contested claims in this proceeding could be stricken because the claimants could then initiate an action against IPG puts the cart before the horse – in the absence of any duty on the part of the claimants to ensure that their agent has not committed a wrongful act *unrelated to their agency*, there is no need to consider whether a claimant could bring an action against IPG for a wrongful act committed outside of their agency relationship.

& n.4 (Fed. Cir. 1999) (Ct. App. for Veterans Claims); *Carrini, Inc. v. Carla Carini S.R.L.*, 57 U.S.P.Q.2d (BNA) 1067 (T.T.A.B. Oct. 31, 2000).

None of the cases the SDC cited is directly on point concerning the Judges' inherent authority (as distinguished from the inherent authority of other entities), particularly given the absence of CRB procedural regulations that address the issues of debarment or sanctions. The Judges find it unnecessary at this juncture to decide whether or not those cases are persuasive authority. The Judges find that the SDC have failed to make a sufficient factual case that debarment or sanctions are warranted in this instance, whether or not the Judges have authority to impose them.

Mr. Galaz committed fraud over a decade-and-a-half ago and was punished for it. At his sentencing, the court considered the Copyright Office's Victim Impact Statement, which included a recommendation that he be barred from participating in all future copyright royalty proceedings. Exh. SDC-P-005, at 3. That was not part of the punishment meted out by the sentencing court. The Judges view the false claim that Mr. Galaz filed in 2000 on behalf of IPG to be part of Mr. Galaz's past fraud for which he has already paid a price. The Judges find it unnecessary to impose additional sanctions on IPG. Of course, should the Judges be presented with evidence of any new misconduct by Mr. Galaz or IPG (or any other participant, for that matter) the Judges will not hesitate to revisit this issue.

4. Allocation of the Burdens of Proof and Persuasion and the Evidentiary Presumptions, to address IPG's Wrongful Conduct

Although the Judges have decided not to impose the draconian and punitive measures urged by the SDC, the Judges nonetheless conclude that the wrongful actions of Mr. Galaz and IPG necessitate the application of evidentiary burdens and presumptions in this proceeding that take into account those wrongful actions. That is, the measured and appropriate remedy for the conduct of IPG and Mr. Galaz is not to distort agency law to the detriment of innocent claimants, but rather—as discussed *infra*—to eliminate the presumption of validity as to any claim identified by IPG in its Petition to Participate. That remedy equitably balances: (i) the need for honest filings to protect the integrity of the royalty distribution; (ii) the burdens and benefits of demonstrating and contesting the *bona fides* of any claim prosecuted by a participant that has apparently engaged in misconduct; and (iii) the rights of all good faith claimants.

At the outset, it is important to note the purpose and importance of an evidentiary presumption. An evidentiary “presumption” is the “judicial recognition of a probability or a logical inference.” James Thayer, *Presumptions and the Law of Evidence*, 3 Harv. L. Rev. 141, 166 (1889). More particularly, when the law has assumed the existence of such a probability or inference under “certain oft-recurring fact groupings,” judges are required to adopt “a standardized practice [of] uniform treatment whenever they occur, with respect to their effect as proof to support issues.” Charles McCormick, *Charges on Presumptions and Burdens of Proof*, 5 N.C. L. Rev. 291, 295 (1927).

Consistent with these statements, the Supreme Court has defined a presumption as:

an inference permitted or required by law of the existence of one fact, which is unknown or which cannot be proved, from another fact which has been proved.

The fact presumed may be based on a very strong probability, a weak supposition, or an arbitrary assumption.

United States v. Gainey, 380 U.S. 63, 78 (1965). The D.C. Circuit has held that the consequence of a presumption is that it serves “as a rule that . . . shifts the burden of producing evidence.” *Thompson v. DEA*, 492 F.3d 428, 434 (D.C. Cir. 2007).

Rebuttable presumptions serve as “default rules.” That is, when the evidence fails to prove that the assertions of either adversary are correct, a tribunal must have a default rule that determines the outcome of the proceeding. A particular default rule may be established “on logical grounds by human experience, or because it accomplishes a procedural convenience, or because it furthers a result deemed to be socially desirable, or because of a combination of two or more of these reasons.” Edmund M. Morgan, *Some Observations Concerning Presumptions*, 44 Harv. L. Rev. 906, 906 (1931). More recently, legal writers have identified the several judicial bases for adopting a presumption as a default rule as:

- (1) probability; that is, experience has demonstrated that if fact *A* is true it is highly probable that inference *B* is also true;
- (2) procedural convenience, *i.e.*, the presumption saves time;
- (3) fairness in allocating the burden of producing evidence upon the party who has superior access to it; and
- (4) notions of social and economic policy, usually implicit rather than expressed.

Note, *A Suggested Role for Rebuttable Presumptions in Antitrust Restraint of Trade Litigation*, 1972 Duke. L.J. 595, 605.

In the present context—especially as a matter of procedural convenience and policy—the presumption of the *prima facie* validity of a claim is a necessary and proper default rule. In the ordinary course, participants in distribution proceedings purport to represent thousands of claims for retransmission royalties for each year. If, in each distribution proceeding, the participants were required to prove the validity of every claim with evidence beyond the “four corners” of the claim itself, the distribution proceeding would become intolerably lengthy and economically inefficient—eliminating the value of such proceedings in lowering the transaction costs of the participants and the claimants.¹⁰

In the most recent proceeding under section 111 of the Act, the Judges had occasion to foreshadow this evidentiary issue. In that action, the Judges found that the introduction of Representation Agreements executed by the claimants, appointing a participant as their agent in the distribution proceeding, was

sufficient to establish that [the participant/agent] is duly authorized to represent the claimant[] covered by these Representation Agreements. Further evidence of representation . . . is unnecessary *in the absence of any evidence calling into*

¹⁰ The Judges note that cable retransmission royalty distribution proceedings have been backlogged for years even without the existence of such an onerous evidentiary burden.

question the authority of [the participant/agent] or the ... claimants that it represents

Distribution of the 2000, 2001, 2002 and 2003 Cable Royalty Funds, Docket No. 2008-2 CRB CD 2000-2003 (Phase II), 78 FR 64984, 64988 (Oct. 30, 2013) (emphasis added).

The Judges' April 25, 2014, Order in this proceeding is consonant with these principles. That Order informed the participants and their counsel of the Judges' "intentions in this proceeding regarding consideration of the evidence produced, the parties' burdens of production and persuasion, and the presumptions that will be applied for purposes of this preliminary hearing." *Order Granting in Part SDC Motion for Request for Additional Evidence and Rescheduling Preliminary Hearing*, at 3-4 (April 25, 2014).¹¹ In particular, and for ease of reference, the following summarizes the Judges' intentions in conducting this preliminary hearing.¹²

- The Judges begin with a *presumption* that each filed claim upon which IPG purports to rely is compliant with the authority, veracity, and good faith standards now codified in 37 C.F.R. § 360.3(b)(vi).
- The SDC may attempt to rebut the presumption of the *prima facie* validity of any and all claims for which IPG seeks a distribution.
- The SDC bear the burden of producing evidence sufficient to rebut the presumption that a claim is valid.
- If the SDC produce sufficient evidence to rebut the presumption that a claim is valid, then IPG bears the burden of producing evidence to prove the validity of that claim by a preponderance of the evidence.
- IPG, as the participant seeking an order based on the validity of a questioned claim, retains the *burden of persuasion* throughout the proceeding regarding the validity of any questioned claim, notwithstanding the potential shifting of the *burden of production* as described above.

Id. at 4.

In the present proceeding, IPG has identified the claims and claimants that it purports to represent, and it has supported those claims with agreements that—in the absence of any evidence calling into question such authority—facially purport to show that IPG is duly authorized to represent those claims and claimants. Moreover, there is no dispute but that the Copyright Office¹³ received and filed the IPG claims as facially valid. As a threshold matter, the IPG claims are no different from any other claims for the distribution of royalties for secondary

¹¹ The Judges also noted in that prior Order that "[t]he presumption and burdens adopted for this proceeding have no wider applicability to the validity of individual claims." *Id.* at 4, n.5. That limitation on applicability is reiterated here. Further, at the hearing, the Judges noted that the presumption and burdens adopted for this proceeding would not necessarily be applicable in any other proceeding. 5/5/14 Tr. at 24. Rather, the Judges intend to handle such issues on a case-by-case basis, giving due regard both to the general principles of evidence and the particular facts of each proceeding.

¹² The claims at issue in this hearing all relate to claims allegedly represented by IPG and subject to challenge by SDC. Because the Judges are applying these evidentiary provisions in this particular proceeding, the following summary specifically references IPG's claims and SDC's challenges.

¹³ The origins of this proceeding precede the current statute, which established the Copyright Royalty Judges program and shifted the claims receipt responsibility from the Copyright Office to the Judges.

transmission of television programs by cable providers. Thus, the Judges conclude that IPG is entitled, at least initially, to a presumption of *prima facie* validity as to the claims at issue. Given the Judges' conclusion, however, that IPG filed a false claim in this proceeding, the Judges must consider whether the SDC have thereby satisfied their burden to produce evidence sufficient to show facts or circumstances to rebut the presumption of validity.¹⁴

As noted above, the Judges find that IPG's claim on behalf of Tracee Productions was not valid. The Judges also conclude that, as a necessary (but not sufficient) predicate to the preservation of any presumptions in its favor, IPG had an indisputable duty to submit truthful filings, which duty it failed to discharge, by failing to scrub and amend the claims filed in this proceeding in order to remove the claim for "Tracee Productions," or any other as-yet-undiscovered claim that was tainted by the prior admitted criminal fraud.

The Judges therefore conclude that, given these facts, neither Mr. Galaz nor IPG can enjoy the benefits of a presumption of validity that itself is predicated on an assumption of good faith by participants and claimants. Indeed, it would be an affront to the distribution process to allow IPG the benefit of a presumption of validity under these circumstances with regard to the claims challenged by SDC. The misconduct of IPG and Mr. Galaz undermines the cable retransmission royalty distribution process. The presumption of validity exists principally because (as noted previously) it would be unwieldy and impractical to require participants to haul thousands of claimants into a hearing, or even to obtain fresh affidavits from the numerous claimants, in order to support otherwise unobjectionable claims. Thus, the structure of the system of distributing royalties in these section 111 proceedings necessitates a presumption that the participants will make their filings in good faith.

Sadly, when good faith is presumed rather than proved, and reliable confirmatory information may be difficult or expensive to obtain, bad actors can pollute the system with fraudulent information, as noted in a seminal article on the economics of fraud and asymmetric information. Cf. George Akerlof, *The Market for "Lemons": Quality Uncertainty and the Market Mechanism*, Q. J. Econ. 488, 500 (1970) ("the difficulty ... distinguishing good quality from bad ... inherent in the business world" provides incentive for unscrupulous economic actors

¹⁴ This treatment of presumptions is consistent with *Fed. R. Evid.* 301. However, neither that rule nor decisional law regarding presumptions consistently sets forth the full effect of evidence introduced to rebut a presumption.

There are two schools of thought in this regard. One approach—known as the "bursting bubble theory" (and also known as the Thayer-Wigmore theory of presumptions)—holds that any evidence introduced to rebut the presumption "bursts" the presumption, so that the presumption is no longer to be considered, thus requiring the party that had benefited from the presumption to produce evidence to counter its adversary's evidence. The other school of thought -- known as the "continuation theory of presumptions" (and also known as the Morgan-McCormick theory of presumptions) holds that even though the presumption is rebutted by some evidence, the trier-of-fact may still apply the presumption and weigh its value together with the evidence introduced by the parties. See Kaitlin Niccum, *Ethics and Presumptions: Lying to Burst the Bubble*, 25 Geo. J. L. Ethics 715, 719 (2012).

In the present case, the Judges need not determine which of these two variants to adopt, because, for the reasons discussed *infra*, under either variant, the evidence dictates that the presumption of the *prima facie* validity of IPG's claims has been successfully rebutted by the SDC. Thus, regardless of whether the presumption of claims validity has "burst" and disappeared, or still exists and must be weighed together with the evidence introduced at the hearing, that presumption has been overcome by the evidence presented.

to bring poor quality goods to market when “the returns for good quality accrue mainly to the entire group ... rather than to the individual”¹⁵

In the present context, the occurrence of fraud is hardly a hypothetical matter. After serving his confinement in prison, Mr. Galaz requested the right to and was permitted to return to this industry sector as an employee of IPG. Mr. Galaz filed a brief with the U.S. District Court overseeing his supervised release from prison in which he sought to convince the court of the safety of his returning to the industry. In the brief, Mr. Galaz explicitly noted that representatives of other claimants—such as the SDC—would have sufficient incentive to monitor his behavior closely to make certain that he did not engage in any further misconduct. Exh. SDC-P-008, at 5 (*Defendant’s Additional Reply Brief in Support of Motion for Clarification*, U.S. v. Galaz).

To put the matter colloquially, the SDC have called Mr. Galaz’s bluff by highlighting the remnants of his prior fraud in this proceeding. To maintain the viability of this claims distribution process, to preserve the reliability of the information presented to the Judges and to prevent the abuse of asymmetric information by participants, the elimination of the presumption of *prima facie* validity as to the claims IPG purports to represent constitutes a measured and proper response. IPG must therefore bear the burden of producing evidence of the validity of its claims. Further, and as noted *supra*, IPG, as the participant seeking an order based on the validity of a questioned claim, must also satisfy the ultimate burden of persuading the Judges—by a preponderance of the evidence—of the validity of any of its questioned claims.

B. IPG’s Standing, as Agent or Assignee, to Pursue Claims in this Proceeding

The SDC assert that IPG has no standing to participate in this proceeding “because IPG has expressly disclaimed its status as an agent and has not met its burden of establishing itself as an assignee of copyright” *SDC Memo*, at 9. The alleged disclaimer is contained in an exchange of emails between Mr. Galaz and counsel for the SDC in which Mr. Galaz stated, “IPG has never asserted that it was the ‘agent’ of Kenneth Copeland Ministries. In fact, IPG has asserted exactly the contrary, and clarified that its role is as an assignee of most parties whose catalogues it controls.”

The exchange of emails grew out of threats that counsel for the SDC made to Kenneth Copeland Ministries, one of the IPG claimants. Counsel for the SDC sought to have Kenneth Copeland Ministries apply pressure to IPG to withdraw its appeal of the final distribution of 1998 cable retransmission royalties¹⁶ by asserting that, as a principal in an agency relationship

¹⁵ Akerlof’s analysis explained how a market can be destroyed by the presence of asymmetric information that allowed sellers with greater information fraudulently to misrepresent the quality of goods or services to relatively ignorant potential buyers, causing buyers to shun the market and lead to its collapse and failure. Here, the statutory collection and distribution of cable retransmission royalties through the auspices of the CRB substitute for the market mechanism, in order to ameliorate the high transaction costs that would otherwise ensue in a purely private market. The Judges therefore must establish evidentiary principles that allow this statutory “market substitute” to operate free of the informational fraud noted by Akerlof, that would place the statutory mechanism in jeopardy. See *Procedural Regulations for the Copyright Royalty Board*, 70 FR 30901, 30904 (May 31, 2005) (“while the copyright owners ... stand to lose the most from any claims fraud that may occur, the officials charged with administering the statutory license royalty pools have a profound sense of responsibility to do whatever reasonably might be done by the government to avoid fraud in the distribution of the royalty pools

¹⁶ *Ind. Producers Group v. Librarian of Congress*, No. 13-1132 (D.C. Cir. argued March 25, 2014).

with IPG, the ministry could be liable to sanctions for its agent's filing of a "frivolous appeal." IPG responded by maintaining that IPG acts as an assignee of rights, rather than as an agent, when it pursues royalty claims.

The agency versus assignee question has arisen in other proceedings involving IPG. *See, e.g., Memorandum Opinion and Order Following Preliminary Hearing on Validity of Claims*, Docket No. 2008-2 CRB CD 2000-2003 (Phase II), at 2 (Mar. 21, 2013). IPG has maintained steadfastly that it is a "copyright owner" in these proceedings, by virtue of an assignment from its clients. The Judges disagree that the assignment of a right to collect money is an assignment of a copyright interest, and view IPG as a "designated agent." At no time, however, has IPG disclaimed its representation of its clients. The SDC's effort to convert a disagreement over the particular legal basis under which IPG represents its clients into a "disclaimer" of IPG's representation is unavailing.

C. Validity of Specific IPG Claims in this Proceeding

The Judges now address the SDC's challenges to each of IPG's claims in this proceeding, applying the foregoing analysis of evidentiary burdens and presumptions. As the SDC repeated the bases for their challenges with respect to multiple claims, the Judges will discuss each basis and then apply their conclusions to each of the claims.

1. SDC's Bases for Challenge

a. Existence of Entity at the Time of Filing

The SDC challenge several of the IPG claims on the basis that the entity claiming royalties never existed or did not exist at the time IPG filed the claim. In essence, the SDC complain that IPG has misstated the legal name of the claiming entity, either through error or by using an unregistered DBA instead of the proper corporate name.

The regulation governing claims that was in effect in July 2000 when these claims were prepared and filed required the "claimant"—*i.e.*, the entity filing the claim—to use its "full legal name." 37 C.F.R. § 252.3(a)(1) (2000). For joint claims, it required "the name of each claimant." 37 C.F.R. § 252.3(a)(3) (2000). Until they were amended in 2001, the regulations did not specify that the full legal name of each joint claimant be listed. *See Final Rule in Docket No. RM 2001-3A-CARP, Cable and Satellite Statutory Licenses*, 66 FR 29700 (June 1, 2001).¹⁷ Consequently, if IPG named a joint claimant, and that name is sufficient to identify the claimant as the entity claiming royalties, the Judges will not dismiss the claim merely because it does not include the full legal name of the joint claimant.

b. Ownership of the Copyright at the Time of Filing

Section 111 of the Copyright Act specifies that the Judges distribute cable compulsory license royalties to "copyright owners" or their "designated agents." 17 U.S.C. § 111(d)(4)(B). The SDC argue that some of the claimants identified in IPG's joint claim do not own copyrights in the programs for which they make a claim.

¹⁷ The Judges do not decide here whether IPG's identification of its joint claimants would have been sufficient under the amended rules.

The Judges again note the importance of evidentiary presumptions. It would be impractical in every instance to require claimants to produce evidence documenting their ownership of each of the programs for which they claim royalties. For that reason, the Judges will generally presume that the claimant owns the programs it claims, and will place the burden on adverse parties to produce information that rebuts the presumption. The Judges have already shifted the burden onto IPG to establish its representation of each of its claimants in this proceeding. Once IPG has met this burden, the Judges find that it is unnecessary to impose the additional burden of requiring IPG to demonstrate that its claimants own the copyright to each of the programs at issue.¹⁸ The burden remains with the SDC to rebut the presumption of ownership. If the SDC are successful in doing so, and IPG fails to produce evidence establishing ownership of a program, the claim must be dismissed as to that program.

c. Claim Tainted by Inclusion in Claim Number 434

The SDC argue that the presence of a false claim for Tracee Productions in IPG's joint claim number 434 should invalidate all of the individual claims included in that joint claim. The SDC's attempt to dismiss all claims contained in claim 434 fails for the same reasons the Judges articulated *supra* for declining to dismiss IPG's entire case based on the false Tracee Productions claim. The Judges will employ the surgical approach of shifting burdens in preference to the blunter instrument of outright dismissal.

d. Invalid Signature on Representation Agreement

The SDC seek to dismiss all claims made pursuant to representation agreements that Lisa Katona Galaz signed, arguing that she was not an authorized signatory of IPG. Ms. Katona is the ex-wife of Mr. Galaz. 5/6/14 Tr. at 339 (Galaz). Mr. Galaz testified that up until 2002, Ms. Katona assisted him in running the business and had authority to sign contracts on its behalf. 5/5/14 Tr. at 265-66 (Galaz).

The SDC counter with a California court decision that rescinded a purported transfer of Mr. Galaz's interest in IPG to a third party and awarded one-half of his interest to Ms. Katona. *See* Exh. SDC-P-031. The SDC argue that up until that time Ms. Katona was not "a principal or owner of IPG" and could not sign contracts on behalf of the company. *SDC Memo*, at 17.

The SDC's argument misses the mark. Even assuming that Ms. Katona was not a principal or owner of IPG before 2002, she may have been granted authorization by a principal or owner—*i.e.*, by her ex-husband Mr. Galaz. Unfortunately, the record is quite thin on the subject of Ms. Katona's authority to bind IPG. No documents have been offered into evidence that memorialize her role in the company and Mr. Galaz's purported conferral of authority. None of IPG's organic documents have been provided. There is not even any evidence of what title, if any, Ms. Katona had during this period. The only evidence is (1) Mr. Galaz's testimony that he authorized Ms. Katona to sign on behalf of IPG, and (2) the representation agreements that Ms. Katona signed. *See* Exhs. SDC-P-027 through 030. As noted above, Mr. Galaz has minimal credibility as a witness.

¹⁸ Note that the joint claim filed by IPG that includes Tracee Productions does not (and need not) include a comprehensive list of programs owned by the joint claimants. The uncertainty caused by the inclusion of a false claim for Tracee Productions, therefore, does not extend to the question of copyright ownership.

Neither IPG nor any of the claimants in this proceeding have sought to renounce the representation agreements on grounds that Ms. Katona was not an authorized signatory. The parties who were in the best position to know whether Ms. Katona possessed actual authority to bind IPG have acted in a manner consistent with the conclusion that the agreements are valid, binding contracts. The Judges view this as corroborative of Mr. Galaz's testimony that he had conferred signature authority on Ms. Katona. In addition, the conduct of the parties strongly suggests that, even if she did not have actual authority, Ms. Katona was invested with apparent authority. *See Restatement (Third) of Agency* § 2.03 (2006) (apparent authority exists when a "third party reasonably believes the actor has authority to act on behalf of the principal and that belief is traceable to the principal's manifestations"). Consequently, the Judges find that Ms. Katona's execution of agreements on behalf of IPG did not render those agreements invalid. The Judges will not invalidate any claims on the basis that Ms. Katona signed the underlying representation agreements.

e. Program Is Not "Devotional" or "Religious" in Nature.

The SDC have argued with respect to one of IPG's claimants—Feed the Children, Inc.—that its programs were not devotional in nature and that the Judges should, therefore, dismiss the claim for royalties from this proceeding. As the Judges made clear in the 2000-2003 cable distribution proceeding, miscategorization of a claimant's programming generally is not grounds for dismissing the claim. *Memorandum Opinion and Order following Preliminary Hearing on Validity of Claims*, Docket No. 2008-2 CRB CD 2000-2003 (Phase II), at 14 (March 21, 2013). This proceeding, however, is unique in that the only Phase I program category at issue is the Devotional category. All other categories have been resolved through settlement agreements (including a settlement agreement between MPAA and IPG concerning claims in the Program Supplier category), and the funds allocated to programs in those categories have been distributed. If Feed the Children, Inc.'s programs do not fall in the Devotional category, its claim must be dismissed.

In determining whether Feed the Children, Inc.'s programming is properly categorized as devotional, the Judges look to the category definition employed by the parties in Phase I of this proceeding.¹⁹ While the distribution of 1999 cable royalties has been bifurcated into two separate phases in accordance with long practice, the two phases constitute parts of the same proceeding. Allocations of royalties that are made in Phase I are binding on the participants in Phase II. It follows that the category definitions used to allocate royalty funds in Phase I of a proceeding must be employed in apportioning the funds in those categories among claimants in Phase II. The category definitions, whether adopted in Phase I through the consent of the parties or a determination by the Judges, become the "law of the case" and are binding on all participants in *both* phases of the proceeding. As the Judges explained in the 2000-2003 cable distribution proceeding, if "*any non-Participant in a Phase I proceeding, could re-open the final Phase I categorizations, the Phase I issues would never truly be final, which would defeat the policy of bifurcating distribution proceedings into two distinct and manageable phases.*" *Order on Motion by Joint Sports Claimants for Section 801(c) Ruling or, in the Alternative, a Paper Proceeding in the Phase I Sports Category*, Docket No. 2008-2 CRB CD 2000-2003 (Phase II), at 2 (May 17, 2013) (emphasis in the original).

¹⁹ "'Devotional Claimants.' Syndicated programs of a primarily religious theme, not limited to those produced by or for religious institutions." Exh. SDC-P-036 at Exhibit 2.

The Judges' consideration of the definition of devotional programming (*i.e.*, programs of a primarily religious theme) is informed by the testimony of the SDC's expert witness, Dr. Brown. Dr. Brown, whom the Judges qualified as an expert in the field of religious television programming, identified three criteria derived from academic literature to identify television programming as having a religious theme:

First, the primary purpose of a religious television program is to focus the audience on their religious faith in God or some other form of deity, or an organized religion, or a religious leader.

Second, religious programs convey some kind of religious doctrine or coded set of religious beliefs.

Third, religious television programming provides some kind of perceived religious benefit to the viewing audience. This benefit could be in the form of spiritual encouragement, religious teaching, taking prayer requests by phone or mail, praying for the needs of viewers, or providing religious materials for further study, growth, or spiritual nourishment.

Exh. SDC-P-036, at 2-3 (Written Testimony of Dr. William J. Brown) (citations omitted).

2. Individual Claims

Applying the foregoing analysis to the individual claims that the SDC challenge, the Judges rule as follows:

a. Creflo Dollar Ministries

The SDC seek to dismiss IPG's claim for Creflo Dollar Ministries²⁰ on the basis that "Creflo Dollar Ministries" is not a legal entity. *SDC Memo*, at 11. The entity that produces Rev. Dollar's television programs *Changing Your World* and *Creflo Dollar* is World Changers Church International, Inc. (WCCI), a Georgia non-profit corporation. *Id.* Moreover, the SDC argue, "Creflo Dollar Ministries" has never been registered as a DBA of WCCI. *Id.*

As discussed, *supra*, the regulatory requirement that the full legal name of each joint claimant be provided in a joint claim was not in effect at the time this claim was filed.²¹ Consequently, the Judges will deem acceptable a DBA that identified the claimant at the time that IPG filed the joint claim (*i.e.*, July 2000). IPG introduced testimony and documentary evidence to support the claim that "Creflo Dollar Ministries" is a DBA that has been used by WCCI and its corporate predecessors for many years. *See, e.g.*, 5/5/14 Tr. at 148 (Winford); Exh. IPG-P-037 ("Creflo Dollar Ministries" bank statement).

²⁰ Claim 434 actually lists "Creflo Dollar Ministries" [sic] as one of the joint claimants. *See* Exh. SDC-P-001. Both parties agree that this and other entries that substitute "Ministeries" for "Ministries" are inadvertent typographical or spelling errors. 5/5/14 Tr. at 29-30 (Galaz). The SDC do not seek to dismiss any of the claims on the basis of this error.

²¹ The Judges reserve the question whether identification of a claimant by a DBA would suffice under the regulations as amended in 2001.

The SDC appear to infer that “Creflo Dollar Ministries” does not exist from the fact that the name has never been registered as a DBA or fictitious business name. *See, e.g., SDC Memo*, at 12; 5/5/14 Tr. at 154-56 (Winford). The one does not necessarily follow from the other. WCCI exists, and the uncontroverted evidence in the record establishes that WCCI and its predecessor corporations have operated and continue to operate using the name “Creflo Dollar Ministries” since well before IPG filed the claims in this proceeding. Whether they have done so in violation of state law is immaterial for purposes of identifying “Creflo Dollar Ministries” as the correct claimant. For purposes of the Judges’ ruling on claims eligibility, Creflo Dollar Ministries and WCCI are one and the same.²²

Finally, the SDC point to a corporate family tree of WCCI and related entities in an effort to rebut the assertion that “Creflo Dollar Ministries” is a DBA of WCCI. On that chart “Creflo Dollar Ministries” appears with the label “unincorporated entity.” Exh. SDC-P-026 (WCCI Corporate Family Tree); 5/5/14 Tr. at 154 (Winford). From this, the SDC infer that Creflo Dollar Ministries is a separate entity from WCCI. *SDC Memo*, at 12. The chart was not admitted into evidence and forms no part of the record of this proceeding. Even if it were part of the record, the reference to Creflo Dollar Ministries as an unincorporated entity, without further explanation, reveals little. The Judges would give it no weight.

The Judges find that “Creflo Dollar Ministries” is a DBA of WCCI, and sufficiently identifies WCCI for purposes of 37 C.F.R. § 252.3(a)(3) as it existed in July 2000 when IPG filed its joint claim. The Judges **DENY** the SDC’s motion to dismiss the claim for Creflo Dollar Ministries.²³

b. Benny Hinn Ministries

The SDC seek to dismiss the claim for Benny Hinn Ministries on much the same basis as their effort to dismiss the claim for Creflo Dollar Ministries. Benny Hinn Ministries was not a registered DBA for World Healing Center Church, Inc. (World Healing) at the time the claim was filed, the DBA registration having been filed in November, 2000. *See* Exh. SDC-P-022 (fictitious name registration of Benny Hinn Ministries).

IPG introduced a declaration of Miles Woodlief, Director of World Healing, in which Mr. Woodlief described “Benny Hinn Ministries” as a DBA of World Healing. *See* Exh. IPG-P-008, at 1 (declaration of Miles Archer Woodlief). IPG offered Mr. Woodlief’s declaration, made under penalty of perjury, in lieu of testimony that the SDC requested.²⁴ The declaration did not

²² Moreover, far from not existing, an unregistered DBA in Georgia has capacity to enter into contracts. Under Georgia law the failure to register a DBA, while a misdemeanor, O.C.G.A. § 10-1-493 (2013), is not grounds for invalidating contracts entered into by the entity using the DBA. O.C.G.A. § 10-1-491 (2013).

²³ The SDC also argued that this claim should be dismissed because it was part of the same joint claim that included Tracee Productions. *SDC Memo*, at 4. As discussed *supra*, the Judges will not dismiss claims on that basis.

IPG’s authority to file a claim and participate in this proceeding on behalf of Creflo Dollar Ministries is established by the representation agreement between them, Exh. SDC-P-027, and the declaration, under penalty of perjury, of Ms. Chandra Winford. *See* Exh IPG-P-010, at 2 (Declaration of Chandra Winford).

²⁴ The SDC sought a subpoena for documents and testimony from a number of IPG claimants including World Healing. The SDC ultimately withdrew its motion and, when they renewed their motion several months later, did not include World Healing. After the Judges denied the SDC’s motion, the SDC moved the Judges to request additional testimony and evidence from the same claimants listed in their second motion for subpoena, which did not include World Healing.

indicate whether World Healing used “Benny Hinn Ministries” as a DBA at the time that IPG filed a joint claim on its behalf.²⁵

Apart from the November, 2000 fictitious name filing, the Woodlief Declaration, and passing references in the hearing transcript, there is no evidence in the record concerning Benny Hinn Ministries. A particularly glaring omission is the lack of a representation agreement between IPG and Benny Hinn Ministries that might have supported the claim that “Benny Hinn Ministries” was a DBA of World Healing in July 2000.

The Judges take official notice, however, of the fact that Benny Hinn Ministries has identified itself as such on its website since at least April of 1999.²⁶ *See, e.g.*, Benny Hinn Ministries Website (archived at the Internet Archive), <https://web.archive.org/web/19980112154239/http://bennyhinn.org/> (visited May 30, 2014). The Judges conclude that “Benny Hinn Ministries” was in use as a fictitious name in July 2000 when IPG filed its joint claim. The Judges **DENY** the SDC’s motion to dismiss the claim for Benny Hinn Ministries.²⁷

c. Adventist Media Center Productions

The SDC urges the Judges to dismiss the claim for Adventist Media Center Productions for two reasons. First, the SDC argue that Adventist Media Center Productions does not exist, *i.e.*, it is neither the actual name nor a DBA for any entity. *SDC Memo*, at 14-15. Second, the SDC argue that the programs that IPG lists as claimed on behalf of Adventist Media Center Productions are owned by two separate entities. *Id.*

The record establishes that “Adventist Media Center Productions” does not exist. *See* Attachment to Exh. SDC-P-020 (amendment to claim). “Adventist Media Center” and “Adventist Media Productions” are both fictitious names for “Adventist Media Center, Inc.,” the entity that produces the programs claimed in this proceeding. *See* Exh. IPG-P-026, at 1 (Declaration of Warren Judd). “Adventist Media Center Productions” appears to be a mistaken amalgamation of the two fictitious names.

The record also establishes that the copyright owners of “It is Written,” “Faith for Today,” and “Breath of Life” are It is Written, Inc., Faith for Today, Inc., and Breath of Life, Inc., respectively. *See id.*; Exh. SDC-P-020 (amendment of claim); Exh. SDC-P-021 (copyright registration search).

The Judges need not decide whether the mistaken identification of IPG’s claimant as “Adventist Media Center Productions” can be overlooked. Even assuming that “Adventist Media Center Productions” properly identifies Adventist Media Productions, Inc., it is clear that

²⁵ The Woodlief Declaration also stated that Benny Hinn Ministries “is aware of and has authorized IPG to collect broadcast retransmission royalties in the [1999 Phase II cable distribution] proceedings for programming owned and controlled by” it. The Judges accept this statement as evidence that IPG was duly authorized to file a claim on behalf of Benny Hinn Ministries.

²⁶ In accordance with 5 U.S.C. § 556(e) (as incorporated by reference in 17 U.S.C. § 803(a)(1)), the Judges grant the parties five business days from the date of this Order to file briefs of no more than five pages if they choose to rebut this fact and move for reconsideration on that basis.

²⁷ The SDC also argued that this claim should be dismissed because it was part of the same joint claim that included Tracee Productions. *SDC Memo*, at 4. As discussed *supra*, the Judges will not dismiss claims on that basis.

Adventist Media Center, Inc. does not own the copyrights to the programs claimed in this proceeding. Nothing in the record establishes Adventist Media Productions as a designated agent of the copyright owners for purposes of claiming retransmission royalties. Because IPG does not represent the copyright owners, or a designated agent of the copyright owners, the Judges **GRANT** the SDC's motion to dismiss the claim of Adventist Media Center Productions.

d. Eagle Mountain International Church DBA Kenneth Copeland Ministries

The SDC challenge IPG's claim for Eagle Mountain International Church DBA Kenneth Copeland Ministries (EMIC) on grounds that EMIC does not own the copyrights to the claimed programs. *SDC Memo*, at 15-16. As discussed, *supra*, the Judges will presume that EMIC is the copyright owner unless the SDC produce evidence sufficient to rebut the presumption.

The SDC offer a report by the minority staff of the Senate Finance Committee as evidence that Kenneth and Gloria Copeland, as individuals, retain the copyrights to the television programs produced by EMIC. *See* Exh. SDC-P-023, at 21-22 (Senate Finance Committee Minority Staff Review of Eagle Mountain International Church). The Judges give this document little weight. While technically admissible, it is hearsay and of questionable reliability. Moreover, the statements contained in the document are vague as to precisely which copyrights are retained by the Copelands and whether they include the church's television programs.

The Judges granted a motion by the SDC to request further information from witnesses with regard to certain claimants, among them, Kenneth Copeland Ministries.²⁸ *See Order Granting in Part SDC Motion for Request for Additional Evidence* (Apr. 25, 2014). Given the timing of the impending hearing, the Judges expressly permitted the parties to perpetuate the testimony of witnesses as necessary. As noted previously, the SDC did not comply with the requirements of the Judges' order regarding the form of notice. The SDC scheduled telephone testimony of a representative of EMIC, Ms. Jan Harbour. Ms. Harbour appeared,²⁹ but on advice of counsel, answered very few of the questions posed by counsel for the SDC. Sensing the futility of further questioning, SDC's counsel terminated the examination, whereupon IPG's counsel questioned the witness. In response to questions from IPG's counsel Ms. Harbour testified that Kenneth Copeland Ministries owns the copyrights in the Kenneth Copeland television programs. *See* Exh. SDC-P-042, at 40-41. Under the circumstances, IPG's questions were outside the scope of the terminated direct examination. The SDC lodged its timely evidentiary objection.

The Judges had difficulty determining how to treat Ms. Harbour's testimony due to the egregious misconduct by both parties. First, in requesting Ms. Harbour's testimony, the SDC flagrantly disregarded the Judges' order concerning the prominent labelling of the request. The Judges construe this as a blatant attempt by counsel for the SDC to deceive the witness into believing that the Judges were commanding her to appear, in the full knowledge that the Judges do not possess that authority in distribution proceedings.

Second, once the witness, her counsel, and counsel for IPG agreed to participate in a perpetuation of testimony, they were obligated to follow the procedures therefor. Even though

²⁸ *See* discussion *supra*, at p. 2.

²⁹ The transcript of this perpetuation of testimony was marked as Exhibit SDC-P-042 and admitted into evidence.

the testimony takes place outside the presence of the Judges, the testimony is to be conducted, to the extent possible, as though it takes place before the Judges in the CRB hearing room. Objections to questions are to be made on the record, and the questions are to be answered (unless, of course, the witness invokes a constitutional privilege). It is then up to the Judges to determine which objections to sustain and which responses to disregard. By flouting this procedure, Ms. Harbour and IPG effectively sought to game the process to ensure that the only testimony in the record would be that which supports their case.

The Judges condemn both parties' conduct. Nevertheless, the Judges are faced with a proverbial Hobson's choice: Either the Judges accept Ms. Harbour's testimony in spite of IPG's misconduct or reject it in spite of the SDC's misconduct. The Judges conclude that the SDC's flagrant disregard of the Judges' order is the more egregious misconduct. Accordingly, the Judges admit Ms. Harbour's testimony.³⁰

The Judges determine that the SDC have failed to rebut IPG's evidence that EMIC owns the copyrights in the church's television programs. The Judges **DENY** the SDC's motion to dismiss EMIC's claim.³¹

e. Feed The Children

The SDC challenge the claim of Feed the Children, Inc. on grounds that its programming is not devotional. In support of this view the SDC have offered a copy of a Feed the Children program from 1999 (Exh. SDC-P-039) and Dr. Brown's testimony.

In response, IPG argues that Feed the Children, Inc. and its programming are religiously-based, and presented:

- Testimony of Marcella Diane Moss, Vice President of Human Resources for Feed the Children, Inc.;
- Certificate of Incorporation of Larry Jones Evangelical Association (corporate predecessor to Feed the Children, Inc.) (Exh. IPG-P-015);
- Restated Certificate of Incorporation of Feed the Children, Inc. (renaming the corporation to "Feed the Children, Inc.") (Exh. IPG-P-016); and
- Feed the Children, Inc. Website (Exh. IPG-P-017).

The Judges find two independent bases for dismissing the Feed the Children claim.

³⁰ But for the SDC's misconduct, the Judges would have sustained the SDC's objections and excluded Ms. Harbour's testimony.

³¹ The SDC also argued that the Judges should dismiss this claim because it was part of the same joint claim that included Tracee Productions. *SDC Memo*, at 4. As discussed *supra*, the Judges will not dismiss claims on that basis.

IPG's authority to file claims and participate in this proceeding on EMIC's behalf is established by the representation agreement between IPG and Kenneth Copeland Ministries, Exh. IPG-P-012.

(1) Feed The Children programming is not “of a primarily religious theme”³²

The operative definition,³³ although cast as a definition for “devotional *claimants*,” focuses on the nature of the *programming* and not of the *entity* that produces it or holds the copyright to it.³⁴ The Judges find IPG’s focus on the nature of Feed the Children, Inc. as an organization is misplaced. While it is apparent from the evidence that Feed the Children, Inc. carries out a humanitarian mission borne of religious conviction, *see, e.g.*, 5/5/14 Tr. at 201 (Moss), that conviction does not answer the critical question whether its *programs* are “syndicated programs of a primarily religious theme.”³⁵

The Judges have reviewed Exhibit SDC-P-039, the sole example of Feed the Children’s programming in the record.³⁶ This 29-minute video is an appeal for funds to provide food to the needy in the United States, along with a brief appeal for nonperishable food and clothing for refugees of the war in Kosovo. The video consists of a series of segments describing and depicting the effects of poverty, primarily on the rural poor in America, separated by direct appeals for funds by the organization’s founder and his wife. The video contains seven fleeting references to religion—most lasting one to two seconds—interspersed throughout. The bulk of the program is designed to appeal to the audience’s sense of compassion, patriotism, and outrage.

Examining the program through the lens of Dr. Brown’s criteria for a religious television program, it clearly fails. The primary purpose of the program is not to focus the audience on

³² Judge Strickler does not join this part III.C.2.e.(1) of the Ruling. *See* separate opinion of Judge Strickler, *infra* at pp. 23 and following.

³³ *See supra*, note 19 and accompanying text.

³⁴ The definition expressly discounts the nature of the entity: “Syndicated programs of a primarily religious theme, *not limited to those produced by or for religious institutions.*” Devotional programs need not be produced by or for religious institutions. Similarly, not all programs that are produced by or for religious institutions have “a primarily religious theme,” rendering them devotional programming.

³⁵ The question whether this programming falls into the devotional category is squarely presented, and its resolution necessarily entails a determination whether or not the programming falls within the definition for that category. With the exception of Judge Strickler, the Judges believe they cannot and should not avoid interpreting the definition of this category (to the exclusion of all others) simply because it includes the term “religious.” To do so would invite efforts to shoehorn a variety of non-religious programming into the devotional category in order to enjoy higher relative valuations for that programming. In fact, the SDC have accused IPG of doing precisely that in the 2004-2009 cable/1999-2009 satellite distribution proceedings. *See Settling Devotional Claimants’ Motion to Compel MPAA-Represented Program Suppliers to Produce Documents*, Docket Nos. 2012-6 CRB CD 2004-2009 (Phase II) & 2012-7 CRB SD 1999-2009 (Phase II), at 3 (Jun. 12, 2014). The Judges will not tolerate such conduct—if it is, in fact, taking place. In addition, the Judges (apart from Judge Strickler) do not believe that the *Ashwander* principle, *see Ashwander v. Tenn. Valley Auth.*, 297 U.S. 288, 347 (1936) (Brandeis, J., concurring), is controlling here. The Judges do not “pass upon a constitutional question” by applying the category definition to the record facts in this proceeding.

³⁶ The SDC requested copies of any exemplars of Feed the Children’s 1999 programming in discovery. IPG objected, and the SDC moved the Judges to compel discovery. The Judges ordered that “IPG shall produce such an exemplar, or state that such an exemplar is not within its possession, care, custody, or control (*through the claimant or otherwise*).” *Order Granting in Part and Denying in Part Settling Devotional Claimants’ Motion to Compel the Production of Documents*, at 14 (Jan. 31, 2014). IPG responded that “No representative samples of Feed the Children, Inc. programming telecast in 1999 has been located within the possession, care, custody, or control of either IPG or Feed the Children, Inc.” Shortly before the hearing Feed the Children, Inc. produced a copy of a 1999 program in response to a request by the SDC pursuant to the Judges’ April 25, 2014 Order. *See* 5/5/14 Tr. at 192-97 (Moss).

Feed the Children, Inc. is to be commended for conducting a diligent search and finding the exemplar that was admitted into evidence as Exh. SDC-P-039. It is regrettable that IPG failed to show the same diligence and initiative during the discovery process, particularly after being directed by the Judges to produce a representative sample.

their religious faith, but to fulfill the humanitarian goal of raising funds to alleviate hunger and human suffering. Notwithstanding the references to religion contained in the program, it cannot be said to convey any specific religious doctrine. Nor does the program provide any perceived religious benefit to the viewing audience. The program is a fundraiser, and its overt appeals are to civic-mindedness and patriotism, rather than to religious conviction. To the extremely limited extent that the program contains any religious content, it is not the program's *primary* theme.

The Judges conclude that Feed the Children, Inc.'s programming is not devotional in nature, notwithstanding the religious nature of the organization and the sincerely-held religious beliefs of its founders. The Judges find this to be a sufficient independent basis for dismissing the Feed the Children, Inc. claim.

(2) Feed The Children programming is covered by the 2004 settlement with MPAA

The Judges also note that, until IPG filed its Written Direct Statement (WDS) in this proceeding, IPG had classified Feed the Children, Inc.'s programming in the Program Suppliers category. In fact, Feed the Children, Inc. was included in the Program Supplier category in the proceeding to distribute cable retransmission royalties for the years 2000-2003 that the Judges concluded in the summer of 2013. *See* Exh. SDC-P-014, at 2 (line 51) (list of IPG-represented claimants in 2000-2003 cable distribution proceeding). Mr. Galaz testified in this proceeding, unconvincingly, that without ever viewing any Feed the Children programming he determined that it should be recategorized as devotional because he had "more familiarity with it now." 5/5/14 Tr. at 115 (Galaz). Presumably that increased familiarity occurred sometime between May 2012 (when IPG filed its WDS in the 2000-2003 proceeding) and December, 2013 (when IPG filed its WDS in this proceeding). It is fair to assume, therefore, that IPG treated Feed the Children, Inc.'s programming as being in the Program Suppliers category at all times up to and including May, 2012.

IPG entered into a settlement agreement with MPAA in March 2004. *See* Exh. SDC-P-019 (IPG-MPAA-LOC Settlement Agreement). Under the agreement, IPG was to notify MPAA of its 1999 Cable claims in the Program Suppliers category and deliver documentation thereon within 30 days after the parties executed the agreement. *See id.* at Part I, ¶4. MPAA was to pay royalties to IPG for properly-documented claims, *id.*, and IPG was to withdraw its notice of intention to participate in the Program Suppliers category in a distribution proceeding for 1999 cable royalties.³⁷ *See id.* at Part II, ¶2.

If IPG performed its obligation under the agreement to provide a list of its 1999 claims in the Program Suppliers category to MPAA in 2004, that list necessarily would have included Feed the Children, Inc., since IPG put Feed the Children, Inc. in the Program Suppliers category up until May, 2012. If IPG asserted a claim on behalf of Feed the Children, Inc. in the Program Suppliers category, IPG may not pursue a duplicate distribution in this proceeding.

IPG is the only party to this proceeding that is in a position to give evidence about its dealings with MPAA under the terms of the settlement agreement. Consequently, the Judges

³⁷ IPG did, in fact, withdraw its Notice of Intent to Participate in the proceeding with respect to "syndicated programming" on May 10, 2004. *See Withdrawal of Notice of Intent to Participate*, Docket No. 2001-8 CARP CD 98-99 (May 10, 2004).

find it appropriate to presume that the Feed the Children, Inc. claim was included among the claims covered by the settlement agreement, and that IPG bears the burden of rebutting that presumption. Mr. Galaz testified that he did not know whether IPG delivered the documentation required under the settlement agreement to MPAA. 5/5/14 Tr. at 131 (Galaz). That is insufficient to rebut the presumption that the claim has been settled. Consequently, the Judges find this a sufficient and independent basis for dismissing the claim of Feed the Children, Inc.

The Judges therefore **GRANT** the SDC's motion to dismiss the claim of Feed the Children, Inc.

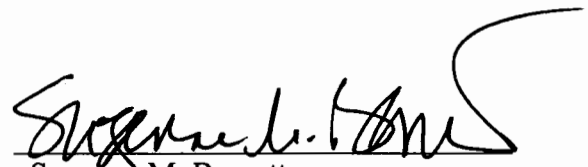
f. Life Outreach International

The SDC challenge IPG's claim for Life Outreach International on grounds that the representation agreement between IPG and the claimant was signed by Lisa Katona and was therefore invalid. *SDC Memo*, at 16-18. As discussed, *supra*, the Judges reject that argument. The SDC's motion to dismiss the claim of Life Outreach International must be **DENIED**.

IV. CONCLUSION

The Judges **DISMISS** IPG's claims for Adventist Media Center Productions and Feed the Children, Inc. IPG may continue to seek royalties for its remaining claims. In accordance with the Judges' February 20, 2014, Hearing Scheduling Order, the Judges deem waived any issues relating to the validity of any claims that were not raised and tried in the Preliminary Hearing.

SO ORDERED.


Suzanne M. Barnett
Chief Copyright Royalty Judge

DATED: June 18, 2014.

SEPARATE OPINION

Judge Strickler, *joining* with respect to all aspects of the Ruling and Order, except *dissenting* with respect to the decision to address the issue of whether the *Feed the Children* program meets the definition of “Devotional Claimant” programming.

I join with the Ruling and Order in all respects, except part III.C.2.e.(1), in which my colleagues attempt to determine whether the *Feed the Children* (FTC) program meets the definition of “Devotional Claimants programming. That is, I agree with the *alternative basis* in the Ruling and Order for rejecting IPG’s claim for royalties on behalf of the *FTC* program, *viz.*, that IPG cannot receive a distribution of royalties in this Phase II proceeding for the *FTC* program because IPG has previously settled its claims for royalties in the Program Suppliers category in this proceeding, and has not produced evidence demonstrating whether it has already received a royalty distribution, through that settlement, for the *FTC* program. *See* part III.C.2.e.(2) of the Ruling and Order, *supra*.

In light of the alternative basis in the Ruling and Order for rejecting the claim for royalties for the *FTC* program, I believe it is unnecessary for the Judges also to rule on whether the *FTC* program constitutes “Devotional Claimant” programming. *See* part III.C.2.e.(1) of the Ruling and Order, *supra* (entertaining the issue and concluding that the *FTC* program is not “Devotional Claimant” programming because it does not contain “a primarily religious theme.”). Such a ruling needlessly enmeshes the Judges in a dichotomization of religious and non-religious themes, beliefs, and activities, and then requires the potential *governmental exclusion* of certain programming from a category of funds designated for such programs.

Such an analysis is to be avoided because it may needlessly implicate the Establishment Clause of the First Amendment to the United States Constitution.³⁸ Although my colleagues do not explicitly frame the issue in the context of the Establishment Clause, the Ruling and Order in this distribution proceeding—conducted pursuant to the applicable provisions of the Copyright Act, 17 U.S.C. §§ 111 and 803—determines whether the theme of a television program is sufficiently “religious,” and thereby also determines whether the owner of the copyright for that program can share royalties in a common pool with other religious programming. Such a governmental attempt to define and delimit religious programming may needlessly invite Establishment Clause scrutiny.³⁹ Although there may be a future case in which the Judges have no choice but to address such an issue, the present proceeding provides a sufficient independent basis (*see* part III.C.2.e.(2) of the Ruling and Order, *supra*), to resolve the issue regarding the *FTC* program without entangling the Judges in issues that resemble, if not exemplify, the thorny constitutional issues regarding the “Establishment Clause” and the potential entanglement of church and state.

³⁸ The “Establishment Clause” provides: “Congress shall make no law respecting an establishment of religion” U.S. Const. amend. I.

³⁹ “[T]he Establishment Clause is a structural bar on government action” Frederick Mark Gedicks and Rebecca G. Van Tassell, RFRA Exemptions from the Contraception Mandate: An Unconstitutional Accommodation of Religion, 49 Harv. Civ. Rts.–Civ. Lib. L. Rev. 1, 7 (Summer 2014) (forthcoming) (available online at <http://ssrn.com/abstract=2328516>).

The appropriateness of avoiding this constitutional issue is underscored by the fact that the Supreme Court's construction of the Establishment Clause has changed over time and appears to remain in a state of flux. From approximately 1947 until 1980, the Supreme Court applied the idea of a strict separation of church and state, adopting a metaphorical "wall of separation." From about 1980 until 1987, the Supreme Court modified this position by holding that the government violates the Establishment Clause only if it actually or symbolically endorses religion or a particular religion. By 1987, dissenting Justices had further splintered the Court on this issue, arguing that the government violates the Establishment Clause only if it literally establishes a church or coerces religious participation. *See generally* Erwin Chemerinsky, *A Fixture on a Changing Court: Justice Stevens and the Establishment Clause*, 106 Nw. U. L. Rev. 587, 598-600 (2012).

As a consequence of these changes, Establishment Clause doctrine has been described as "famously chaotic ... encompass[ing] multiple 'tests' that purport to control the outcome of cases even though the Court frequently ignores the tests" Geddis & Van Tassell, *supra* at 9. Thus, it has been asserted that "[i]t is by now a commonplace view that Establishment Clause doctrine is unstable, inconsistent, and incoherent." *Id.* at 21; *see also* Chemerinsky, *supra*, at 600 ("At present, there arguably is no clear majority viewpoint among the Justices regarding the scope of the Establishment Clause.").⁴⁰

The Judges need not, and should not, risk entering this constitutional briar-patch. An adjudicative body may prudently decline to address an issue of this sort when the matter can be resolved on a different and narrower basis. As Justice Brandeis famously stated, a court should "not pass upon a constitutional question although properly presented by the record if there is also present some other ground upon which the case may be disposed of." *Ashwander v. Tenn. Valley Auth.*, 297 U.S. 288, 347 (1936) (Brandeis, J., concurring). Justice Brandeis's concurring opinion in *Ashwander* has been adopted in subsequent Supreme Court decisions as an important principle of judicial restraint. *See, e.g.,* *Lyng v. Northwest Indian Cemetery Protective Association*, 485 U.S. 439, 445-46 (1988); *Three Affiliated Tribes of Berthold Reservation v. Wold Engineering*, 467 U.S. 138, 157-58 (1984); *Gulf Oil Co. v. Bernard*, 452 U.S. 89, 99 (1981). This principle is sometimes identified as "the last resort rule." *See* Lisa A. Kloppenberg, *Avoiding Constitutional Questions*, 35 B.C.L.Rev. 1003, 1003 (1994).⁴¹

Here, the *FTC* program dispute indeed can be resolved on a different basis, one that does not suggest an Establishment Clause issue.⁴² In fact, this dispute has been resolved by my fellow

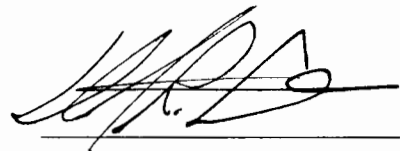
⁴⁰ At present, the Supreme Court appears to apply at least two different doctrinal tests to decide Establishment Clause cases: the "endorsement test," *see, e.g., Co. of Allegheny v. ACLU*, 492 U.S. 573, 797 (1989) (government action that an informed and reasonable observer would understand to have the purpose or effect of endorsing religion would violate the Establishment Clause), and the "*Lemon* test," *see Lemon v. Kurtzman*, 403 U.S. 602, 612-13 (1971) (government action that aids religion violates Establishment Clause if it lacks a secular purpose or a primarily secular effect, or entangles government with religion) (emphases added).

⁴¹ Justice Brandeis's conclusion that a potential constitutional issue should be avoided even though "presented by the record," when another basis for resolution exists, suggests that my colleagues rely too strongly in the present case on the conclusion that the parties have "squarely presented" the issue of whether the *FTC* program has a primarily religious theme. *See supra*, note 35.

⁴² If I were to consider whether the *FTC* program was "Devotional Claimant" programming, I am not at all certain that I would undertake the same analysis, or reach the same conclusions, as have my colleagues. (Of course, given that Part III.C.2.e.(2) of the Ruling and Order sets forth an alternative "settlement" basis for rejecting IPG's claim, any hypothetical error in the majority's "religious theme" argument would appear to constitute merely harmless error.) In any event, the purpose of this separate opinion is not to disagree with the *resolution* of that issue in the

Judges on a separate basis. That alternative holding resolves the *FTC* program dispute *in its entirety*. I see no reason to address an additional issue that requires the Judges to identify and distinguish among religious themes, belief, activities, programs, or institutions. There is simply no need for the Judges in the present proceeding to issue a decision that may appear to favor or “endorse” one argument as to the “religious theme” of the *FTC* program over the other, in a ruling that might be construed as “entangling” government with religion, thereby inviting unnecessary constitutional scrutiny.⁴³

For the foregoing reasons, I dissent as to part III.C.2.e.(1) of the Ruling and Order.



David R. Strickler
Copyright Royalty Judge

DATED: June 18, 2014.

Ruling and Order, but rather to note my disagreement with my colleagues’ decision *to address* this latent Establishment Clause issue at all, given that the *FTC* program dispute has been resolved on a different and narrower non-constitutional basis. Thus, any alternative analysis in this separate opinion as to whether the *FTC* program did or did not constitute “Devotional Claimant” programming would itself be inconsistent with the rationale for this separate opinion, and therefore moot.

⁴³ My colleagues raise the concern that failing to address the religious theme issue here might invite participants in future distribution proceedings to “shoehorn” non-religious program claims into the Devotional Claimant category, if the latter categorization would yield a higher dollar amount of royalties. *See supra*, note 35. However, my colleagues note that some parties may *already* be attempting such “category shopping” (to coin a phrase) in ongoing proceedings, *id.*, suggesting that parties do not need the restraint recommended in this Separate Opinion as an incentive to engage in such strategies. I am confident that the Judges can address this issue, and any constitutional overtones, in an appropriate subsequent proceeding in which the *Ashwander* principle of judicial restraint is not relevant.

UNITED STATES COPYRIGHT ROYALTY JUDGES
The Library of Congress

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| <i>In re</i> DISTRIBUTION OF CABLE ROYALTY FUNDS | DOCKET NO. 2012-6 CRB CD 2004-09 (Phase II) |
| <i>In re</i> DISTRIBUTION OF SATELLITE ROYALTY FUNDS | DOCKET NO. 2012-7 CRB SD 1999-2009 (Phase II) |

**MEMORANDUM OPINION AND RULING
ON VALIDITY AND CATEGORIZATION OF CLAIMS**

The Copyright Royalty Judges (Judges) published notice in the *Federal Register* on August 16, 2013, commencing the captioned proceedings. 78 Fed. Reg. 50113. Some of the original participants negotiated settlements which the Judges published and approved during the course of this proceeding. The remaining participants assert controversies relating to distribution of the cable and satellite retransmission royalties. The remaining participants are the Motion Picture Association of America as representative of claimants in the program suppliers category (MPAA), the Settling Devotional Claimants (SDC)¹, and Worldwide Subsidy Group LLC, d.b.a. Independent Producers Group, as representative of claimants in both the program suppliers and the devotional categories (IPG).

¹ The SDC are Amazing Facts, Inc., American Religious Town Hall, Inc., Catholic Communications Corporation, Christian Television Network, Inc., The Christian Broadcasting Network, Inc., Coral Ridge Ministries Media, Inc., Cottonwood Christian Center, Crenshaw Christian Center, Crystal Cathedral Ministries, Inc., Evangelical Lutheran Church in America, Faith for Today, Inc., Family Worship Center Church, Inc. (d.b.a. Jimmy Swaggart Ministries), International Fellowship of Christians & Jews, Inc., In Touch Ministries, Inc., It Is Written, John Hagee Ministries, Inc. (a.k.a. Global Evangelism Television), Joyce Meyer Ministries, Inc. (f.k.a. Life in the Word, Inc.), Kerry Shook Ministries (a.k.a. Fellowship of the Woodlands), Lakewood Church (a.k.a. Joel Osteen Ministries), Liberty Broadcasting Network, Inc., Messianic Vision, Inc., New Psalmist Baptist Church, Oral Roberts Evangelistic Association, Inc., RBC Ministries, Reginald B. Cherry Ministries, Rhema Bible Church (a.k.a. Kenneth Hagin Ministries), Ron Phillips Ministries, Speak the Word Church International, St. Ann's Media, The Potter's House of Dallas, Inc. (d.b.a. T.D. Jakes Ministries), Word of God Fellowship, Inc. (d.b.a. Daystar Television Network), Billy Graham Evangelistic Association, and Zola Levitt Ministries.

I. Statement of the Case

The issues before the Judges include: (1) whether the Judges should sanction IPG for fraud by disqualifying it from participating in these proceedings or by imposing some other sanction, (2) with regard to some of the claims, whether the party purporting to represent the claimant is authorized to pursue the claim and collect the royalty distribution on behalf of that claimant, (3) whether certain claims are valid, and (4) from which program's category certain claims should be paid.

The Judges presided at an evidentiary hearing (preliminary hearing), commencing on December 8, 2014, and continuing for approximately five bench days. At the hearing, the Judges heard testimony from five live witnesses and admitted 180 exhibits. The Judges also considered designated testimony of one witness who had appeared at a prior hearing and deposition testimony from one witness that had been perpetuated for a prior hearing.

Based upon the evidence and the argument of counsel, the Judges rule:

- (1) IPG is not barred from participation in these proceedings.
- (2) The participants in these proceedings had the requisite authority to represent some of the challenged claimants and claims, either by agreement directly with the rights holder or by agreement between an authorized representative of the rights holder(s) and the participant, but lacked the requisite authority with regard to other challenged claimants and program titles, as detailed in "Exhibits A" to this Ruling.
- (3) The titles attributed to the challenged claimants are compensable, as described on "Exhibits A".
- (4) The claims described in "Exhibits A" to this Ruling are allowed or dismissed, as noted thereon.
- (5) The claims the Judges affirm in this ruling are to be paid from funds allocated to the program category indicated in "Exhibits A" to this Ruling.

II. Ruling on Evidentiary Issues

During the preliminary hearing, the Judges reserved ruling on objections to the following exhibits.

- IPG-P-074: Declaration of Jan Harbour, Kenneth Copeland Ministries.
 - SDC614: Report from Senate Finance Committee Minority Staff review of Eagle Mountain International Church d/b/a Kenneth Copeland Ministries.
 - IPG-P-085: Printout of pages from webpage of "*Singsation!*"
 - SDC617: Printout of search of website of Georgia Secretary of State Corporations Divisions for entities in which "Creflo Dollar" is identified as an officer.
 - SDC623: Printout of search of website IMDb.com for program title Home Sweet Home.
- 12/15/14 Tr. 76, 52, 142, 55, 57.

Also during the hearing, IPG tendered Exhibit IPG-P-83, a declaration of Willie Wilson, of Willie Wilson Productions. The SDC objected to the admission of the declaration asserting that it contained inadmissible lay opinion addressing the issue of characterization of the Willie Wilson Productions program, *Singsation!*. The Judges admitted the Exhibit, subject to redaction of improper lay opinion. See 12/15/14 Tr. at 82.

The Administrative Procedures Act (APA) governs the proceedings before the Judges to the extent not inconsistent with the Copyright Act. 17 U.S.C. § 803(a)(1). In relevant part, the APA provides that “[a]ny oral or documentary evidence may be received, but the agency as a matter of policy shall provide for the exclusion of irrelevant, immaterial, or unduly repetitious evidence.” 5 U.S.C. § 556(d) (2013). The relevant section of the Copyright Act provides that the Judges may admit hearsay in proceedings “to the extent deemed appropriate.” 17 U.S.C. § 803(b)(6)(C)(iii); 37 C.F.R. § 351.10(A). The *Federal Rules of Evidence*, although helpful guidance for the Judges, are not binding on them.

A. Hearsay

Counsel objected to the admission of exhibits IPG-P-074 and SDC614 on hearsay grounds.

Under the *Federal Rules of Evidence*, “hearsay” is defined as a statement that: (1) the declarant does not make while testifying at the current trial or hearing, and (2) a party offers in evidence to prove the truth of the matter asserted in the statement. Fed. R. Evid. 801(c) (Dec. 1, 2014). The declarant of neither currently-challenged exhibit was present at the hearing. In both instances, the proponent offered the challenged exhibit to prove the truth of the matter each exhibit contained. Both are hearsay. However, hearsay is admissible in these proceedings “to the extent deemed appropriate by the Copyright Royalty Judges.” 17 U.S.C. 803(b)(6)(C)(iii); *see* 37 CFR 351.10(a).

1. Declaration of deposed witness

Exhibit IPG-P-074 is a declaration by a witness (Ms. Jan Harbour) who had been deposed previously on the same issue in a separate proceeding. 12/15/14 Tr. at 66-67 (Counsel Boydston), 74 (Counsel MacLean). The Judges admitted the opposing party’s exhibit (SDC615), which at Exhibit D, is Ms. Harbour’s perpetuated deposition testimony from that prior proceeding. *Id.* at 74, 76 (Counsel MacLean).

IPG argues it is appropriate for the Judges to admit this hearsay because the declaration is consistent with the testimony in the perpetuation deposition. *Id.* at 73. IPG did not say that the declaration would add any additional relevant evidence to the present proceeding.

The relevance of the substance of the declaration was established by the admission of the deposition testimony. The Judges may consider the evidence in the perpetuation deposition and do not need an additional declaration that says the same thing. The proffered declaration evidence is, therefore, repetitious. *See* 5 U.S.C. § 556(d) (agencies “as a matter of policy shall provide for the exclusion of ... unduly repetitious evidence.”) IPG argues that the consistency of the evidence between the declaration and the deposition testimony serves to rebut the argument from SDC that the declarant is being evasive. *Id.* at 73. The Judges find that the deposition testimony, which includes cross-examination on the same subject, is sufficient evidence. Further, IPG gave no reason why the witness was not present at the hearing. Under these circumstances, the Judges find it would be inappropriate to admit the hearsay evidence.

The Judges **SUSTAIN** the SDC’s objection and **REJECT** exhibit IPG-P-074.

2. Public Record

Exhibit SDC614 is a report from a legislative review. *Id.* at 49 (Counsel MacLean). The SDC make two arguments for admission: (1) the report falls under the public record exception to

the hearsay rule, and (2) it shows the evasive nature of the claimant. *Id.* at 50-51. The proffered exhibit is a set of findings from an investigation that was purportedly authorized by the United States Senate, and thus the report appears to be an official document recounting investigative findings by the Senate. In fact, the exhibit is a report of a minority staff review, which status affects the weight, if not the admissibility, of the exhibit.

The SDC's first argument cites the public record exception of the Federal Rules of Evidence. The Judges need only evaluate the evidence to determine whether it is irrelevant, immaterial, or unduly repetitious and, based on that determination, decide whether to admit the evidence.

The SDC argue that the report concerns a character trait of the deposed witness, Ms. Harbour. In this proceeding, the SDC are challenging the witness's claim to corporate ownership of the copyright. The document purports to establish ownership of the copyright at issue in individuals instead of in an entity. *Id.* at 50-51 (Counsel MacLean). It is relevant and material to the Judges' evaluation of the validity of the witness's claim.

The evidence regarding ownership of the copyright that this exhibit provides is not available in any other exhibit; thus, it is not repetitious. *Id.* at 51-52 (Counsel MacLean). The Judges find no evidentiary reason to exclude it.

IPG reminded the Judges that when they admitted this document in another proceeding, the Judges observed that its reliability is questionable. *Id.* at 50. The SDC agreed that it is questionable. *Id.* at 51. However, IPG did not offer a detailed explanation of the question regarding its reliability. IPG merely stated that there could be "good grounds to exclude it." *Id.* at 50. The Judges find that this goes to the weight, and not the admissibility of the evidence.

The Judges **OVERRULE** IPG's objection and **ADMIT** Exhibit SDC 614. The Judges will review the exhibit and weigh it appropriately.

B. Lack of Sponsoring Witness

Exhibits SDC617 and SDC623 are printouts of web searches. The searches were done by the SDC's attorney. 12/15/14 Tr. 53, 54, 57 (Counsel MacLean).

IPG objected on the grounds that there is no sponsoring witness for the exhibits. *Id.* at 54, 58. The Copyright Act provides that "[n]o evidence, including exhibits, may be submitted in the written direct statement or written rebuttal statement of a participant without a sponsoring witness, except where the Copyright Royalty Judges have taken official notice, or in the case of incorporation by reference of past records, or for good cause shown." 17 U.S.C. § 803(b)(6)(C)(xi).

The SDC's attorney countered that he had listed himself as the sponsoring witness, and he was willing to testify about the searches. *Id.* at 54, 57. IPG's attorney responded that "there's been a ruling in a prior proceeding that counsel cannot be the sponsoring witness," and he offered to provide a citation to the ruling. *Id.* at 54, 55. The IPG attorney has not provided the citation to the Judges. The objection is therefore **WAIVED**.

The Judges **ADMIT** the SDC's exhibits SDC617 and SDC623.

C. Discovery Violation

Exhibit IPG-P-085 is a printout of pages from the *Singsation!* website. IPG offered it to demonstrate that the Willie Wilson programs viewable by clicking on links on the webpages are religious in nature. *Id.* at 138. IPG also offered an exemplar of the Willie Wilson programs, that the Judges admitted. *Id.* at 134, 137. *See* Exhibit IPG-P-084. The SDC obtained the exemplar during discovery, but not the printout of the webpages. The SDC objects to the admission of the printout because, *inter alia*, a discovery order in the present proceeding required IPG to produce all documents regarding categorization. *See Amended Joint Omnib. Ord. on Discov. Mtns.*, 24-25 (July 30, 2014) (Omnibus Discovery Order). IPG offered no explanation for not producing IPG-P-085 during discovery.

The discovery order clearly provides that “[n]o party may offer any undisclosed document at any further hearing in this proceeding.” *Id.* at 25. The Judges **SUSTAIN** the SDC’s objection and **REJECT** Exhibit IPG-P-085.

D. Incomplete exhibit

Exhibit IPG-P-017 was not admitted at the hearing because it was incomplete: it was missing “Exhibit A.” Because the document had been filed in a prior proceeding the Judges acknowledged that IPG could have an opportunity to make it complete. IPG has subsequently filed the complete exhibit.

The Judges **ADMIT** Exhibit IPG-P-017 (as amended).

E. Incompetent lay opinion

After reviewing the declaration of Willie Wilson, and comparing the proposed redactions of lay opinion submitted by IPG and the SDC, the Judges adopt the redactions proposed by the SDC. The Judges thus considered Exhibit IPG-P-83, as redacted by the SDC.

III. Analysis of Claims Issues

A. Validity of Claims

As a general rule, the Judges presume a claim to be valid if it is filed during the month of July of the year following the year for which the claimant seeks distribution of royalties and includes the specified elements required on the claim form. The Copyright Royalty Board (CRB) royalty claims form includes and requires a certification by the filing entity that it has authority to file the claim. In the absence of evidence to challenge the honesty or correctness of the certification, the Judges do not look behind a timely filed claim to confirm the filing party’s authority. That is, the Judges afford the filed claim a “presumption of validity,” subject to competent evidence challenging the filer’s authority that would rebut the presumption. A claim filed by an unauthorized representative is not a valid claim.

The second requirement for participation in the distribution of royalty funds is that the claimant file or be included in a Petition to Participate (PTP) in the distribution proceeding. A claimant may file an individual PTP, or may join with other claimants and share representation, in which case the participant must include a list of all claimants it purports to represent in the proceeding. In the present proceeding, a number of individual participants, after having filed individual PTPs, decided to join a group of like claimants participating under the aegis of a

multi-claimant PTP. The claimants joining the multi-claimant group(s) rightly withdrew their individual PTPs, thus removing their contact information from the CRB proceeding Notice List. “Withdrawing” the individual PTP, in a context that clearly communicated the claimant’s desire to join a claimant group, did not invalidate the withdrawing claimant’s right to participate; rather, it shifted responsibility to pursue the claims to an existing participant group.

B. Verification of Authority to Represent Claimants

1. The SDC Consists of Claimants that Retained Joint Legal Counsel

The SDC consist of a number of entities that filed individual claims on their own behalf.² These claimants, recognizing a common interest, engaged joint counsel to represent their interests in this proceeding. The SDC are not an organization. The SDC did not, collectively, file any claims in this, or any, proceeding. Any party objecting to the validity of any claim represented by joint counsel for the SDC would necessarily have to state a valid objection to the claim *per se*. The SDC are not joint claimants for the devotional category and are not required to establish authority to represent entities in the claims process. Counsel for the SDC are engaged for legal representation only, not for royalty collection on behalf of any individual devotional claimant.

2. MPAA Represents the Interests of Claimants that Filed Their Own Claims, Individually or Jointly

MPAA does not file claims. *See* 12/8/14 Tr. at 156 (Saunders). Rather, it serves as the participating entity on behalf of individual or joint claimants that filed on their own behalf. The MPAA thus entered into representation agreements with both individual and joint claimants authorizing MPAA to act as representative, through joint legal counsel, for purposes of the distribution proceeding. MPAA is not required to certify its authority to file the claims, as MPAA did *not* file the claims in question. Notwithstanding, MPAA did engage in a certification process whereby the joint claimants it represents confirmed their entitlement to claim retransmission royalties for specified program titles.

3. IPG Asserts Authority to Act as Claimant Representative for Rights Holders

IPG is an entity formed for the sole purpose of representing claimants to royalties. Unlike the SDC, IPG was not formed merely to hire legal counsel for a group of claimants. Unlike MPAA, IPG is not a member organization acting on behalf of members and others to collect and distribute royalty funds. IPG is a commercial enterprise performing a service for rights holders. In most instances, IPG contracts with the rights holders to perform a “turnkey” service; that is, IPG files a joint claim listing its clients and subsequently appears as a participant in the distribution proceeding to assert and protect the rights of its clients.

For IPG to act in the capacity of agent for the principal rights holders, IPG must have representation authority from each rights holder that IPG purports to represent. The Judges’ rules require that the claimant must have authorized IPG to file a claim on its behalf at or before the time IPG actually makes the filing. *See* 37 C.F.R. § 360.3 (b)(2)(vii). Further, IPG must

² *See supra*, note 1.

have continuing authority to pursue the claimants' royalty rights through the distribution proceeding(s). IPG's certification of representation authority is entitled to the same presumption of validity as that of any other representative, unless another party raises a reasonable objection that would preclude or rebut the presumption.

C. Disqualification of IPG

The SDC argued forcefully in their WRS on Claims, and in opening and closing arguments at the preliminary hearing, that IPG should be disqualified from representing claimants before the Judges. *See* SDC WRS (Claims) at 1-2, 6-8; 12/16/14 Tr. at 125-55 (SDC Closing Argument). The Judges addressed the question of IPG's disqualification in their ruling and order on claims in the 1999 cable distribution proceeding, and concluded that it was unnecessary to decide whether the Judges had authority to order such a remedy on the factual record in that proceeding: "The Judges find that the SDC have failed to make a sufficient factual case that debarment or sanctions are warranted in this instance, whether or not the Judges have authority to impose them." *1999 Claims Ruling*, at 7. With respect to the various factual predicates that the SDC identify to justify IPG's disqualification, the Judges reach the same conclusion here.³

However, after the preliminary hearing it became apparent to the Judges that IPG's principal witness, Raul Galaz, gave false testimony concerning a document IPG produced in discovery. This new misconduct is of a kind and severity that could justify IPG's disqualification. As such, it squarely presents the question of the Judges' authority to consider such a remedy.

1. Mr. Galaz's False Testimony

In 2009, IPG filed joint claims relating to funds deposited for both cable and satellite retransmissions during calendar year 2008. IPG alleges its claims for cable and satellite were identical and contained identical attachments listing its represented claimants.⁴ The attachment to IPG's cable claim has pages numbered 1-10. The pages of the attachment to the satellite claim, however, are numbered 1-3 and 6-8. Pages 4-5 and 9-10, which are included in the attachment to IPG's cable claims, are not attached to the satellite claim that IPG produced in discovery, *see* Ex. 603 at Bates Nos. IPG-0170-0177, or the copy in the CRB files. *See* Ex. 302 (IPG 2008 Satellite Claim).

On the basis of IPG's 2008 satellite claim, MPAA and the SDC challenged a number of claims of IPG-represented claimants, arguing that IPG did not file claims for these claimants by the statutory deadline. These claimants were all identified on the pages that were attached to IPG's cable claim, but missing from IPG's satellite claim.⁵ A total of 42 copyright owners on

³ On March 6, 2015, the SDC filed a Motion in Further Support of its Request to Disqualify IPG from Participation in these Proceedings, seeking to add an additional basis for disqualifying IPG: IPG's alleged knowing retention of an expert witness who had previously acted as a consultant for the SDC in this proceeding. Given the Judges' ruling concerning authority to grant the remedy that the SDC seeks, the Judges **DENY** this SDC motion as moot.

⁴ 2008 cable claim number 607; 2008 satellite claim number 193.

⁵ The SDC challenged IPG 2008 satellite claims for three purported Devotional Programming claimants: Jack Van Impe, Life Outreach, and Willie Wilson Productions, Inc. MPAA challenged IPG 2008 satellite claims for 39 purported Program Supplier claimants on grounds that they did not file claims. In his testimony, Mr. Galaz pointed out that one of these claimants, Willie Wilson Productions, Inc., and its program "*Singsation!*," is cited on page 2 of

whose behalf IPG allegedly filed its 2008 joint satellite claim were not in fact contained in its satellite claims filing for that year.

Mr. Galaz testified at the preliminary hearing that he believed IPG had included all of the pages of the attachment to its 2008 satellite claim. He implied that these pages were missing from the CRB records due to a clerical error made by the CRB when entering the claims in its records. 12/15/14 Tr. at 201-02. To explain why pages were missing from the copy of the claim that IPG produced in discovery, Mr. Galaz testified that he obtained that copy from the CRB files when he traveled to Washington, D.C. and visited the Library of Congress. *See* 12/9/14 Tr. at 104-05.⁶

In the ordinary course of official business, upon receipt of claims sheets from claimants or their authorized representatives, the CRB inscribes on the first page of each a hand-written sequential number. The CRB inscribed the number “193” on the first page of IPG’s satellite claim form. *See* Ex. 302 (IPG 2008 Satellite Claim), at 1. However, the copy of IPG’s 2008 satellite claim that IPG produced in discovery (and bearing IPG Bates numbers) *did not contain that handwritten claim number*. *See* Ex. 603 at Bates No. IPG-0170. The document Mr. Galaz testified he copied from CRB files, therefore, could not have been copied from CRB files. The copy must have come from another source (most likely IPG’s own records), thus supporting the conclusion that Mr. Galaz was trying to rebut with his testimony: IPG omitted the missing pages from its filing with the CRB.

Mr. Galaz did not testify truthfully when he stated that he obtained the copy of the claim with missing pages that IPG produced in discovery from the CRB records. “False testimony in a formal proceeding is intolerable. We must neither reward nor condone such a ‘flagrant affront’ to the truth-seeking function of adversary proceedings.” *ABF Freight Sys., Inc. v. NLRB*, 510 U.S. 317, 323 (1994) (citations omitted). The Judges must determine whether the remedy sought by the SDC is available to them.

2. The Judges’ Authority to Disqualify IPG

Neither the Copyright Act, nor the Judges procedural regulations, address the question whether the Judges can disqualify an entity or individual who represents claimants in a proceeding. As they did in the 1999 cable distribution proceeding, *see Ruling and Order Regarding Claims*, Docket No. 2008-1 CRB CD 98-99 (Phase II), at 6-7 (June 18, 2014) (*1999 Claims Ruling*), the SDC argue that the Judges have inherent authority as an administrative

the claim form as an example of a program that had been retransmitted by satellite during the royalty year. *See* 12/15/14 Tr. at 199-200 (Galaz); Ex. 302.

⁶ Specifically, Mr. Galaz testified as follows:

Q: So, if I may, when you came to the Copyright Office and got this document from the Copyright Office what you got was also missing pages four, five, nine and ten, correct?

A: Correct. I just didn’t realize it at the time.

Q: And then when IPG produced that document, was asked to produce that document, to MPAA you produced the document you got here at the Copyright Office, correct?

A: That’s correct.

12/19/14 Tr. at 105 (emphasis added).

agency to debar individuals and entities from doing business with the agency, and, as an adjudicatory body, the Judges have inherent authority to govern and regulate the conduct of those who practice before them. SDC WRS (Claims) at 6-8; *SDC Prehearing Memorandum of Law on Claims Issues*, Docket No. 2008-1 CRB CD 1998-1999 (Phase II), at 5-8 (Apr. 16, 2014).

Assuming, without deciding, that the Judges do possess the inherent authority to debar or otherwise disqualify a claimant representative for misconduct, the Judges find that it would be inappropriate to exercise that authority in the absence of regulations governing how, and under what circumstances they may do so. *See, e.g., Gonzales v. Freeman*, 334 F.2d 570, 578 (D.C. Cir. 1964). Participants are entitled to “official ... guidance as to what acts will precipitate a complaint of misconduct, how charges will be made, met or refuted, and what consequences will flow from misconduct if found.” *Id.* Even though, in this particular instance, all of the participants know—or should know—that giving false testimony under oath in an official proceeding is serious misconduct, there is nevertheless no “official guidance” in either the Copyright Act or CRB Rules concerning the consequences of that misconduct. Sadly, this case highlights the urgent need for such official guidance.⁷

D. Presumption of Validity

The Judges will not afford to IPG the “‘presumption of validity’ [that] ... each filed claim ... is compliant with the authority, veracity and good faith standards now codified in 37 C.F.R. § 360.3(b)(vi).” *Ruling and Order Regarding Claims*, Docket No. 2008-1 CRB CD 98-99 (Phase II), at 9-10 (June 18, 2014) (June 18, 2014 Order). The Judges take this step due to (1) Mr. Galaz’s false testimony in this proceeding, and (2) IPG’s failure, once again, to purge its filings of false claims.

As discussed in the previous section, Mr. Galaz testified during the preliminary hearing that the incomplete copy of IPG’s 2008 joint satellite claim that IPG produced in discovery was obtained from the CRB’s files. He did so to support his contention that the CRB was at fault for the missing pages. That testimony was untrue.

In addition, IPG’s 1999 joint satellite claim includes a claim on behalf of Tracee Productions, a fictitious entity, used by Mr. Galaz as part of the fraudulent scheme for which he was convicted and incarcerated. *See* June 18, 2014 Order, at 3-4. In the 1999 cable distribution proceeding, the Judges denied IPG the benefit of a presumption of validity because IPG’s 1999 joint cable claim included a claim on behalf of that entity. The Judges took this step notwithstanding the fact that IPG did not pursue royalties for the Tracee Productions claim, because “IPG’s decision not to pursue the Tracee Productions claim in [the 1999] proceeding does not excuse the original misconduct. Nor does it obviate the damage done to the integrity of the distribution process in [that] proceeding. Rather, IPG should have timely and affirmatively withdrawn the claim to eliminate the taint of fraud associated with its claims on behalf of Tracee Productions.” June 18, 2014 Order at 4.

⁷ The Judges would welcome petitions for rulemaking that discuss their authority to adopt, and recommend the content of, rules, if any, sanctioning misconduct on the part of counsel or parties in CRB proceedings.

Because Mr. Galaz and IPG likewise have failed to remove the fraudulent Tracee Productions claim from IPG's 1999 *satellite* filing in *the present proceeding*, the Judges reach the same conclusion now. (Further supporting this conclusion, Mr. Galaz and IPG could have removed the fraudulent Tracee Productions 1999 satellite claim in this consolidated proceeding, after the Judges' June 18, 2014 Order, yet declined to do so.)

The Judges find that both of these examples of misconduct demonstrate Mr. Galaz's and IPG's continuing disregard for the integrity of these royalty distribution proceedings. This creates considerable uncertainty about the veracity of IPG's representations to the Judges. This uncertainty permeates, *inter alia*, all of IPG's claims for each license and year covered by this proceeding. In short, the Judges cannot rationally consider any of IPG's claims to be presumptively valid.

As the Judges stated in their June 18, 2014 Order, the remedy of denying IPG the presumption of validity "equitably balances: (i) the need for honest filings to protect the integrity of the royalty distribution; (ii) the burdens and benefits of demonstrating and contesting the *bona fides* of any claim prosecuted by a participant that has apparently engaged in misconduct; and (iii) the rights of all good faith claimants." *Id.* at 7.⁸

E. Categorization of Claims

1. Phase I Categories of Long Standing

The Copyright Royalty Tribunal (CRT), a predecessor body to the CRB, initially bifurcated royalty distribution proceedings at the request of the participants.⁹ Participants seeking cable and satellite royalty distribution aggregated themselves by stipulation into groups or categories of claimants having like programming interests, *e.g.*, syndicated programs, devotional programs, live team sports telecasts, *etc.* Each group became known as a "Phase I category." No participant asked for, and the CRT Commissioners did not grant, official sanction to the categories or the definitions thereof. Phase I of the distribution proceeding afforded the participants an opportunity to agree to the proper proportional allocation of royalties among the program categories. If the participants did not agree, the Commissioners (and later Arbitrators, followed by Judges) determined the relative value of the categories' claims, based upon how the claimant categories defined themselves.

Participants in cable and satellite royalty distribution proceedings have continued the categorization practice, relying upon agreed category descriptions that have remained largely unchanged since 1978.¹⁰ In the present proceeding, the participants ask the Judges to determine the proper category for certain claims, whose owners have not participated directly in Phase I negotiations. Specifically, in this proceeding, the Judges analyze objections lodged by MPAA and the SDC to claims IPG has asserted in each of their long-standing categories of claims.

⁸ More broadly, the Judges adopt and incorporate by reference the full reasoning set forth at pages 7-11 in the June 18, 2014, Order.

⁹ *1978 Cable Royalty Distribution*, 45 Fed. Reg. 63026, 63027 (Sep. 23, 1980).

¹⁰ According to historical records at the CRB, in 1978, the cable fund participants formed six categories: Program Suppliers, Sports, Noncommercial TV (PBS), Music, U.S. & Canadian TV, and Noncommercial Radio (NPR). Commercial TV (NAB) split from Canadian TV in 1979. Devotional Claimants formed a separate category in 1980.

In some instances, the category representative objects to IPG's claims being paid from the funds allocated to the category during Phase I of the proceedings that are consolidated for Phase II proceedings in the instant case. In some instances, IPG, hedging its bets, has asserted claims for the same program in two different categories (Program Suppliers and Devotional), apparently leaving to the Judges determination of the character of the claims. In their analysis, *infra*, the Judges have made those determinations, disqualifying claims from one category, which settles the claims by default in the other category.

The Judges do not dismiss claims because they are asserted in the wrong category. *See Memorandum Opinion and Order following Preliminary Hearing on Validity of Claims*, Docket No. 2008-2 CRB CD 2000-03 (Phase II), at 14 (March 21, 2013) [hereinafter, the March 21, 2013 Order]. If the Judges grant a group representative's challenge to a claim categorization, the Judges will order that the claim be included in the appropriate category.¹¹ For example, an IPG claim that the Judges "dismiss" from the Devotional category will fall, by default, within the Program Suppliers category, unless MPAA asserts a successful objection to the claim on grounds pertinent to its group.

No claimant may collect royalties from two different Phase I categories for the same title. The Judges will not, however, dismiss such a "two-category" claim from participation altogether, unless the other participants have raised sufficient objections as to the validity and allowability of the claim in *each* category.¹²

IV. IPG Objections to Claims Presented by MPAA and SDC

A. IPG Challenges to MPAA Claims

1. Failure to Document "Chain of Title"

IPG challenges a substantial number of MPAA claims¹³ on grounds that MPAA failed to document the full chain of title between MPAA and the copyright owners it represents. *See* IPG WRS (Claims) at 5-9. Many of MPAA's direct clients are agents acting on behalf of multiple copyright owners. While MPAA has produced its agreements with its clients, it has not produced any agreements between its clients and its clients' clients.

The Judges addressed this question in the 2000-03 Phase II Cable Distribution proceeding:

In this proceeding, MPAA has produced fully-executed Representation Agreements with each of the MPAA-represented program suppliers. Each

¹¹ The exception to this rule would be a claim that belongs in a category that is not part of the proceeding. That circumstance does not arise in this proceeding.

¹² In section VI.F.(2), *infra*, the Judges identify a group of claims that IPG cross-claimed in both the Devotional and Program Suppliers' categories. Some of those claims are disallowed as Devotional and are thus compensable from the Program Suppliers' funds allocation. Others of those claims and DISALLOWED for all purposes, as IPG failed not only to choose a category, but also failed to adequately identify the licensor or the year but merely listed a group of potential licensors for each title, leaving the claims fatally ambiguous.

¹³ According to IPG, "Review of the MPAA's program claims reveals the existence of 43,628 unique program/claimant/years combinations, and of those, 19,527 (44.75%) are being made by agents purporting to act on behalf of an underlying copyright owner." IPG WRS to MPAA Claims, at 9 n.9. However, IPG's spreadsheet that identifies its individual claims objections lists 41,295 claims as being subject to this particular objection.

Representation Agreement includes a provision stating that if the “Claimant” (MPAA’s counterparty) has filed a joint claim, MPAA is authorized to represent all joint claimants to that joint claim. Each Representation Agreement also includes a provision stating that the Claimant is the duly authorized representative of all joint claims submitted by the Claimant, and that the Claimant is authorized by all joint claimants to execute the Representation Agreement on their behalf. By their terms, the Representation Agreements are perpetual—*i.e.*, they remain effective until terminated by one of the parties.

The Judges find this evidence sufficient to establish that MPAA is duly authorized to represent the joint claimants covered by these Representation Agreements. Further evidence of representation, such as the contracts between the MPAA-represented program suppliers and the underlying claimants, is unnecessary in the absence of any evidence calling into question the authority of MPAA or the joint claimants that it represents—*e.g.*, a disavowal of representation by an underlying claimant or evidence that the claimant is represented by another party. IPG has offered no such evidence with respect to the 615 claims that it seeks to challenge. Therefore, the challenge, even if IPG had raised it properly, would have been rejected.

Final Distribution Order, Docket No. 2008–2 CRB CD 2000–2003 (Phase II), 78 Fed. Reg. 64984 (Oct. 30, 2013) (citations and footnote omitted).

The Judges adhere to this reasoning. While it is fair and reasonable to require a participant to document its own contractual relations with third parties, the Judges will not require evidence of contractual relations between third party nonparticipants in the absence of evidence that calls the participant’s authority into question. That is, the “presumption of validity” described *supra* applies in such a factual context.

IPG argues that this reasoning is “diametrically opposed” to the Judges’ basis for rejecting a number of IPG’s claims earlier in the 2000-03 proceeding, and that “those decisions cannot be reconciled.” IPG WRS to MPAA Claims, at 9. IPG is wrong. In each instance, the Judges essentially required participants to come forward with documentation of contracts with those parties with whom they were in privity. The different outcomes of those challenges are attributable to different evidence, not different standards: MPAA produced its contracts and IPG, in some instances, did not.

The Judges reject IPG’s characterization of this approach as a “rule that insulates a party from scrutiny merely by adding another layer of agency.” It is not “insulation” but an allocation of the burdens of proof and persuasion, consistent with the presumption of validity that the Judges apply to claims, absent extenuating circumstances. *See generally Ruling and Order Regarding Claims*, Docket No. 2008-1 CRB CD 98-99 (Phase II), at 7-11 (June 18, 2014). If a participant comes forward with evidence that calls into question another participant’s authority to represent a claimant, the burden shifts to the putative representative to substantiate that authority.¹⁴

¹⁴ The Judges take note of IPG’s suggestion that “if IPG, as an agent of copyright owners, contracted with another entity to act as IPG’s agent in these proceedings, and simply represented in its contract that ‘IPG is the duly

The Judges, therefore, **REJECT** IPG's argument that all of MPAA's claims that were made through third party agents should be dismissed for failing to provide full documentation of the chain of title.

2. Defective or Inadequate Vetting Process

IPG argues that the process by which the MPAA attributes ownership of television programs to its claimants is "backward" and "rife with 'moral hazard,'" resulting in multiple programs being attributed to the wrong claimant. IPG WRS to MPAA Claims, at 10-11 & n.10. IPG asserts that the MPAA's process is so deficient that it "brings each and every program claimed under the MPAA umbrella into issue." *Id.* at 10-11 n.10.

MPAA's begins its certification process by having an outside contractor process listings of television programs that were distantly retransmitted by cable systems and satellite providers in a given royalty year in order to divide up the programs into separate lists for each copyright owner that MPAA represents. 12/8/14 Tr. at 162-64. MPAA then provides each of its claimants or claimant representatives with such lists, together with a certification form. *Id.* MPAA instructs an authorized signatory of the claimant or claimant representative to strike out any programs that the claimant does not own, and to sign the attached form certifying that he or she has "examined or caused to be examined, each and every entry listed" and that "[w]ith the exception of those edited out ... the claimant" the signatory represents "is entitled to receive ... retransmission royalties allocated to those work(s)" MPAA Ex. 337. The signatory is instructed to identify one of three bases upon which he or she is able to make the certification: as the owner, as the duly authorized agent of the owner, or as an officer or partner of the owner or agent (where the owner or agent is a legal entity). *Id.*

IPG contrasts the MPAA's process with its own system, which entails providing each of its claimants with a list of all television programs that were retransmitted distantly in a given royalty year on a selection of 150 stations (about 64,000 titles), and instructing the claimants to identify any of their programs that appear in the list. IPG WRS to MPAA Claims, at 17-18 n.26.

The Judges do not find that the process employed by MPAA is lacking, much less sufficiently lacking to call into question all of MPAA's program claims. In fact, from the standpoint of producing accurate results, the Judges do not find IPG's process to be clearly superior to MPAA's, or vice versa. The main differences between the two methods of attributing programs to claimants relate to the resources expended by the IPG and MPAA, on the one hand, and the burden placed on the claimants, on the other.

The Judges reject IPG's argument that MPAA's program claims should be subject to wholesale rejection, or to a higher level of scrutiny, due to defects in the MPAA certification process. Nevertheless, IPG argues that MPAA's process has led to a number of different types of misattribution of program ownership, and the Judges now examine those specific types of alleged misattribution in turn.

authorized representative of all joint claims submitted by IPG, and that IPG is authorized by all joint claimants to execute the Representation Agreement on their behalf,' then no further scrutiny of IPG's contractual or program claims could occur." IPG WRS to MPAA Claims, at 9 n.8. Given the circumstances that have led to IPG's loss of the "presumption of validity," such a transparent subterfuge could well constitute fresh and sufficient evidence to cast doubt on IPG's representation, underscoring the need to place the burden on IPG to substantiate its claims.

3. False Attribution of Copyright Ownership to Foreign Collecting Societies

IPG alleges that MPAA has falsely attributed copyright ownership in claimed programs to Audio-Visual Collection Society d/b/a Screenrights (Screenrights) and *Entidad de Gestión de Derechos de los Productores Audiovisuales* (EGEDA), collecting societies for producers of audiovisual works in Australia and Spain, respectively.¹⁵ IPG asks the Judges to dismiss *all* MPAA claims on behalf of those two entities.

Collecting Societies are not authors. In the absence of an assignment of rights, they are not copyright owners. They may, of course, collect royalties on behalf of the copyright owners they represent—that is, after all, why they exist. They may file claims and participate in distribution proceedings as duly authorized representatives of their members, either on their own or through a representative like the MPAA.

IPG contends that the Screenrights and EGEDA claims should be dismissed because MPAA has held out those entities as copyright owners when they are, in fact, not copyright owners.¹⁶ Assuming, arguendo, that MPAA has represented these collecting societies to be copyright owners when, in fact, they are representatives of copyright owners, that would have no bearing on the validity of the underlying claims. The Screenrights and EGEDA claims are presumed valid unless IPG presents evidence that questions their validity. At most, IPG's evidence questions MPAA's authority to represent certain specific program titles; it does not cast doubt on MPAA's authority to represent copyright owners who are members of Screenrights and EGEDA. The Judges **REJECT** IPG's attempt to disqualify all of MPAA's claims on behalf of Screenrights and EGEDA.

IPG identifies two specific program titles claimed by MPAA on behalf of Screenrights that it alleges are, in fact, owned by IPG-represented claimants: "*The Outdoorsman with Buck McNeely*" and "*From the Heart*."¹⁷ IPG introduced a declaration from Mr. McNeely stating that Timberwolf Productions, an IPG claimant, is the copyright owner of *The Outdoorsman with Buck McNeely*, and a declaration from Ms. Jennifer Valle stating that Lawrence Welk Syndication, another IPG claimant, is the copyright owner of "*From the Heart: a Tribute to Lawrence Welk and the American Dream*." Exs. 14, 15. In rebuttal, MPAA produced a letter from Ms. Marie Foyle, General Counsel of Screenrights, which states that Screenrights claims two different programs with similar titles, and is not claiming royalties to the programs owned by Timberwolf Productions and Lawrence Welk Syndication, respectively. Ex. 347.

¹⁵ MPAA represents Screenrights directly. Ex. 311. MPAA represents EGEDA indirectly: it represents Fintage Publishing and Collection, B.V. (Fintage House), a Dutch entity, which, in turn, represents EGEDA. See Exs. 316, 341, 346.

¹⁶ IPG bases this argument on an electronic spreadsheet that the MPAA produced in discovery in response to the Judges' July 30, 2014 *Joint Order on Discovery Motions*. This spreadsheet, which is not in the record, was the MPAA's response to IPG's request for "Electronic files identifying ... MPAA-represented claimants [by year] ... program titles [for which] MPAA is making claim ... [and] which ... claimants are making claim to which MPAA-claimed programs," and was produced in compliance with the Judges' direction that "[t]o the extent MPAA retains any electronic data relating to claimants, program titles, agents, or representation by MPAA, MPAA should share that data in electronic form." *Id.* at 17.

¹⁷ IPG does not challenge any specific program title represented by MPAA through EGEDA.

The Judges note that *From the Heart: a Tribute to Lawrence Welk and the American Dream* does not appear in either of the lists of program titles appended to Ms. Jane Saunders' WRT in the Cable and Satellite cases. MPAA may claim retransmission royalties for the similarly-titled "*From the Heart*."

As for *The Outdoorsman*, the program title listed in MPAA's WRS is *The Outdoorsman with Buck McNeely*. The Judges find that this program is owned by Timberwolf Productions and represented by IPG in this proceeding. The MPAA may not collect royalties for this program title.

4. False Attribution of Copyright Ownership to U.S. Broadcasters and Foreign Distributors

IPG asks the Judges to dismiss all of MPAA's claims on behalf of U.S. broadcasters and foreign distributors, arguing that dismissal is justified because of widespread instances in which "IPG can affirmatively establish that the MPAA has incorrectly attributed ownership of programs to network broadcasters (and foreign distributors), many with no connection to the production or distribution of the program in issue" IPG WRS to MPAA Claims, at 14.

IPG's focus on "ownership" of programs is misplaced, or at least imprecise. The proper focus at this stage of the proceeding is to determine whether participants have authority to represent the claimants they purport to represent, and whether those claimants have valid claims to cable and satellite compulsory license royalties. A claimant need not be a "copyright owner" in the conventional sense¹⁸ to claim royalties. It is sufficient that the claimant be licensed or authorized to do so by the owner of the work, as may be the case under distribution and syndication agreements.

There is no inherent impediment to a broadcaster or foreign distributor claiming retransmission royalties, as IPG seems to imply. An entity's ability to claim and administer royalties depends on the agreements in place between the copyright owner and the entity. For the Judges to grant IPG's request to dismiss all of MPAA's claims on behalf of U.S. broadcasters and foreign distributors, the Judges would have to determine that all of MPAA's claims on behalf of those entities are untrustworthy. IPG attempts to make that implication by providing several examples of specific television programs that IPG alleges MPAA has incorrectly attributed to U.S. broadcasters and foreign distributors.

The specific program titles that IPG challenges, and the Judges' resolution of those challenges, are set forth in the following table.

| Program Title | Disposition of IPG Challenge |
|----------------------|-------------------------------------|
| Emmy Awards | Granted |

¹⁸ An exclusive licensee of any of the rights under copyright is a "copyright owner" under the Copyright Act, 17 U.S.C. §§ 101 (definitions of "copyright owner" and "transfer of copyright ownership"), 201(d)(2), and may thus describe multiple parties with respect to a single work. As an exclusive licensee, the distributor or syndicator entitled to claim retransmission royalties is a "copyright owner" in that technical sense of the term.

| | |
|---|---------|
| Singsation! | Granted |
| AFI Life Achievement Award: A Tribute to Barbra Streisand | Denied |
| Dragon Ball Z | Denied |
| Main Floor | Granted |
| Beast Wars | Denied |
| Late Show | Denied |
| Late Late Show | Denied |
| Martha Stewart Living | Denied |
| Yesterday's Children | Denied |
| Game for Anything: The Strength of Women | Granted |

The Judges' analysis and resolution of IPG's challenges is set forth below. As is shown in the preceding table, fewer than half of IPG's challenges (four out of 11 titles) are successful. That is an insufficient basis upon which to conclude that MPAA's program claims on behalf of U.S. broadcasters and foreign distributors are "either unreliable or fraudulent," as IPG claims, and should be dismissed. Indeed, there is no evidence to suggest that MPAA engaged in fraud with regard to these four successfully challenged titles, as opposed to simply making an incorrect filing.¹⁹ The Judges **DENY** IPG's request to dismiss all of MPAA's claims on behalf of U.S. broadcasters and foreign distributors.

a. Emmy Awards

IPG states that the MPAA has falsely attributed ownership of the Emmy Awards broadcasts to the U.S. network broadcasters and to Content Film International, a distributor. IPG offers a declaration of Ms. Heather Cochran of the Academy of Television Arts and Sciences (Academy) as evidence that the Academy retains the right to collect retransmission royalties for all broadcast years, including 2000-2009, and that IPG is its authorized representative. Ex. IPG-P-18. Attached to Ms. Cochran's declaration are several searches of the Copyright Office's database of registration records showing that copyright registrations were issued to the Academy for the prime time Emmy's broadcasts in 2000, 2001, 2002, and 2009.

In response, MPAA witness Jane Saunders testified that she did not believe the MPAA was claiming the Emmys in this proceeding. 12/11/14 Tr. at 104-05 (Saunders). MPAA's

¹⁹ By comparison, the Judges did not conclude that *all* of IPG's claims should be dismissed because of IPG's egregious failure to withdraw its 1999 Tracee Productions satellite claim or its egregious attempt to blame the CRB for the absence of alleged claims in its 2008 satellite joint claims filing. Rather, such misrepresentations by IPG resulted only in the elimination of the presumption of validity that would otherwise apply to IPG's factual assertions. Many other IPG claims were dismissed as objectionable without their deficiencies also serving to disqualify any of IPG's otherwise valid claims. In similar fashion, the Judges' decision to dismiss these four MPAA claims is based only on the objectionable nature of those filings, not on any fraudulent filing or attempt to blame the CRB for its own alleged acts or omissions. Thus, there is no factual parallel that would warrant a dismissal of all of the MPAA's claims on behalf of U.S. broadcasters and foreign distributors, or the elimination of the presumption of validity as to the MPAA's claims.

counsel averred, more specifically, that MPAA did not claim royalties for the titles “*Prime Time Emmy Awards*” or “*Emmy Awards*.”²⁰ 12/10/14 Tr. at 183.

In fact, MPAA does seek royalties for “*The 60th Primetime Emmy Awards*” from the 2008 cable fund, as evidenced by Appendix B to Ms. Saunders’ WDT in the cable case. Ex. 309, App. B, at 181. The Judges find Ms. Cochran’s Declaration to be sufficient evidence to overcome the presumption that the MPAA’s claim to this program is valid. Consequently, the Judges **GRANT** IPG’s challenge and find that IPG, and not MPAA, is authorized to claim royalties for “*The 60th Primetime Emmy Awards*” from the 2008 cable fund.

b. *Singsation!*

IPG challenges MPAA’s attribution to CBS of the title “*Singsation!*,” which IPG claims on behalf of Willie Wilson Productions. MPAA is seeking royalties for *Singsation!* from the 2000 satellite royalty fund. See, Ex. 309, App. B, at 45. IPG offers the declaration of Andre Fair of Willie Wilson Productions as evidence that Willie Wilson Productions retained satellite retransmission rights to *Singsation!* in 2000, and that IPG is its authorized representative. Ex. IPG-P-020. MPAA did not controvert this evidence. The Judges find the Fair declaration to be sufficient evidence to overcome the presumption that the MPAA’s claim is valid. Accordingly, the Judges find that IPG, and not MPAA, is authorized to claim royalties for the title *Singsation!* from the 2000 satellite fund.²¹

c. AFI Life Achievement Award: A Tribute to Barbra Streisand

IPG alleges that MPAA has incorrectly attributed copyright ownership of the title “*AFI Life Achievement Award: A Tribute to Barbra Streisand*” to Twentieth Century Fox. IPG offers evidence of the American Film Institute’s copyright registration to demonstrate that that entity owns the copyright. See Ex. IPG-P-021.

MPAA provided correspondence from Ms. Lynn Weisman, Executive Director, Legal Rights Clearance for Twentieth Century Fox, together with redacted copies of a license agreement between The American Film Institute and Fox and a Side Letter among the major networks. Ex. 349. The attached agreements include provisions granting Fox (and the other networks, in their turn) exclusive rights of broadcast and distribution, including retransmission, in the program. The agreements state that the American Film Institute’s only compensation is the specified license fee. See, e.g., *id.* at Attachment 1, ¶¶2(a), 5(a).

A certificate of copyright registration constitutes *prima facie* evidence of the validity of copyright and of the facts stated in the certificate. 17 U.S.C. § 410(c). Among the facts stated in a registration certificate are the work’s author (and initial copyright owner) and the copyright claimant—*i.e.*, the owner of copyright at the time the registration is filed with the Copyright Office. See 17 U.S.C. § 409. A registration certificate does not, however, reveal any information about subsequent transfers of ownership, or any licenses of rights in the work. Where, as here, there is evidence of a license of retransmission rights, the Judges will give

²⁰ The MPAA does have claims in multiple years for the *Daytime Emmy Awards*. IPG did not introduce any evidence challenging MPAA’s claims to the *Daytime Emmys*.

²¹ The Judges also find that *Singsation!* belongs in the Program Suppliers, and not the Devotional Claimants category. See *infra*, at section IV.A.4.b.

precedence to that license over a copyright registration. Accordingly, the Judges find that the MPAA, and not IPG, may claim royalties to this title.

d. Dragon Ball Z

IPG contests MPAA's attribution of copyright ownership in the title "*Dragon Ball Z*"²² to ABC Family Entertainment, contending that the true copyright owner is IPG-represented claimant Funimation Productions. IPG offers evidence of a copyright registration for an episode of *Dragon Ball Z* that designates Funimation Productions, Ltd. as the author and Toei Animation Company, Ltd. as the copyright claimant, in order to establish Funimation as the copyright owner.

MPAA directs the Judges' attention to the Librarian of Congress' vacated Order in the 1993-97 cable distribution proceeding. *Distribution of 1993, 1994, 1995, 1996 and 1997 Cable Royalty Funds*, Docket No. 2000-2 CARP CD 93-97, 66 Fed. Reg. 66433 (Dec. 26, 2001), *vacated*, 69 Fed. Reg. 23821 (Apr. 30, 2004).²³ In that decision, the Librarian adopts a determination by a CARP that Fox Family Worldwide, and not Funimation, "was the proper syndicator for *Dragon Ball Z*, and therefore IPG was not entitled to a distribution for this program." *Id.* at 66435. Fox Family Worldwide is predecessor-in-interest to ABC Family Worldwide. 12/11/14 Tr. at 26 (Saunders).

The Judges find the evidence presented by both parties to be valueless for determining the party that is entitled to collect royalties for *Dragon Ball Z*. The claimant (as distinguished from the author) listed on the copyright registration is Toei Animation Company, Ltd. The registration, therefore, is *prima facie* evidence that *Toei*,²⁴ and not Funimation, was the U.S. copyright owner at the time the registration was filed. The registration, therefore, does nothing to advance IPG's argument that Funimation is entitled to cable and satellite royalties in the U.S.

The decision cited by MPAA was based on a CARP report that was, in turn, based on the record facts before the CARP.²⁵ Those record facts are not before the Judges. The Judges cannot, therefore, determine whether the facts that supported the CARP's conclusion that Fox Family Worldwide was entitled collect royalties from the 1997 cable royalty fund would support a conclusion that ABC Family Worldwide is entitled to collect royalties from the funds at issue in this proceeding.

²² The series is referred to variously as *Dragon Ball Z*, *Dragon Ball*, and *Dragonball Z*. In the absence of any contrary evidence, the Judges assume that all three titles refer to the same television series.

²³ The Librarian vacated the earlier decision as moot following a settlement by the parties. The Order vacating the prior decision notes that the vacatur was made "in order to facilitate the settlement and because the matter is now moot [and] should not be construed as a repudiation of the reasoning in the December 26, 2001 Recommendation and Order." 69 Fed. Reg. at 23822.

²⁴ Toei Animation Co. Ltd. is included in joint cable and satellite claims filed by Fintage House for a number of years in this proceeding. MPAA has listed that entity in its petitions to participate in cable and satellite proceedings for 2005-08, but has misspelled its name as "Toel Animation Co. Ltd." MPAA lists "Toel Animation Co. Ltd." as an MPAA-represented claimant in Appendix A to Ms. Saunders' Written Direct Testimony for both cable and satellite for 2005 and 2006. *See* Ex. 309, App. A, at 9, 15; Ex. 301, App. A, at 31, 37. MPAA presented no evidence associating *Dragon Ball Z* with this claimant. For its part, IPG does not claim to represent Toei (or Toel).

²⁵ The Judges do not decide whether it would be proper to rely on a vacated decision of the Librarian.

MPAA's claim to this title is entitled to a presumption of validity. As discussed above, IPG's claim is not. In the absence of credible evidence to overcome the presumption in favor of MPAA, IPG's challenge must fail. MPAA may claim royalties for *Dragon Ball Z*.

e. Main Floor

IPG challenges MPAA's attribution to American Broadcasting Companies, Inc. of ownership of the title "*Main Floor*," which IPG claims on behalf of Mark Anthony Entertainment. IPG offers the Declaration of Mr. Tony Intelisano of Mark Anthony Entertainment as evidence that Mark Anthony Entertainment retained the right to make claim for *Main Floor*, and that IPG is its authorized representative. Ex. IPG-P-023. MPAA did not controvert this evidence. The Judges find Mr. Intelisano's Declaration to be sufficient evidence to overcome the presumption that the MPAA's claim is valid. Accordingly, the Judges find that IPG, and not MPAA is authorized to claim royalties for the title *Main Floor*.

f. Beast Wars

IPG seeks to challenge MPAA's claim on behalf of ABC Family Worldwide, Inc. for the animated series "*Beast Wars*." IPG asserts that *Beast Wars* is owned by Mainframe Entertainment, an IPG claimant, and offers as evidence two search results from the Copyright Office's online database and Mr. Galaz's testimony. MPAA offered no evidence in response.

The first search result offered by IPG is a record of a recorded document described as "Mortgage of distribution rights and assignment; power of attorney," apparently memorializing a security interest in 13 episodes of *Beast Wars*. The parties to the document are Mainframe Entertainment, Inc. and the Royal Bank of Canada. The document was executed in 1998 and recorded in 1999.

Unlike a copyright registration, a recorded document (or the online record of a recorded document) does not constitute *prima facie* evidence of the facts contained therein. The Judges are free to accord it whatever weight they deem appropriate. In this particular instance it appears that the Royal Bank of Canada accepted a security interest in distribution rights for 13 episodes of *Beast Wars* from Mainframe Entertainment. The Judges find this to be credible evidence that, at the time the document was executed, Mainframe Entertainment owned certain distribution rights in those 13 episodes. The Copyright Office record, however, reveals nothing about the nature of those distribution rights, and whether they included retransmission rights in the U.S. The Judges cannot determine from this 1999 record whether any of the 13 episodes were retransmitted during the years covered by this proceeding. As to episodes of *Beast Wars* other than the 13 covered by the recorded document, the record creates at best an inference that Mainframe Entertainment is owner of the distribution rights. Moreover, the record reveals nothing about any subsequent licenses or assignments that may have taken place after it was recorded. In short, this copyright office record is of very little value in determining entitlement to statutory license royalties during the period covered by this proceeding.

The second search result offered by IPG is an online record of a copyright registration for a 1996 screenplay for a *Beast Wars* episode entitled "*Fallen Comrades*." While the certificate of copyright registration would constitute *prima facie* evidence of ownership of the screenplay by the claimant, Mainframe Entertainment, Inc., it demonstrates virtually nothing about entitlement to statutory license royalties from the finished episode, much less any other episodes of the program.

Finally, IPG's witness Raul Galaz testified, based on his personal knowledge, that *Beast Wars* (also marketed under the title "*Beast Machines*") is owned by Mainframe Entertainment. 12/09/14 Tr. at 116, 128 (Galaz). Even putting aside other well-documented problems with Mr. Galaz's credibility,²⁶ the Judges find Mr. Galaz's conclusory and self-serving statement to have no weight.

The Judges find the evidence introduced by IPG to be insufficient to overcome the presumption that MPAA's claim is valid. MPAA, and not IPG, may claim royalties for *Beast Wars*. The Judges **REJECT** IPG's challenge.

g. Late Show and Late Late Show

IPG contests MPAA's attribution of copyright ownership in "*Late Show with David Letterman*" and "*The Late, Late Show*" (with a variety of hosts) to CBS Broadcasting. IPG asserts that Worldwide Pants, Inc. (WPI) owns copyright in these programs, and that IPG represents WPI in these proceedings. IPG offers three search results of online Copyright Office records as evidence of WPI's copyright ownership. These results document copyright registrations for *Late Show with David Letterman*, *The Late, Late Show with Craig Kilborn*, and *The Late Late Show with Craig Ferguson* naming WPI as claimant.

MPAA counters with an affidavit from Fred Nigro, Secretary of WPI. *See* Ex. 332. Mr. Nigro states that all U.S. cable and satellite retransmission royalties to WPI's programs are collected by WPI's distributor, CBS. *Id.* ¶8. Mr. Nigro also states that IPG's representation of WPI commenced on May 1, 1999 and terminated on December 31, 2002. *Id.* ¶5. Mr. Nigro concludes that "IPG is not authorized to represent the interests of WPI before the Copyright Royalty Judges in any proceedings concerning the collection of U.S. cable and satellite retransmission royalties." *Id.* ¶10.

As discussed above, where, there is evidence of a license of retransmission rights, the Judges will give precedence to that license over a copyright registration. The Judges find Mr. Nigro's affidavit to be sufficient evidence that WPI has licensed CBS to collect retransmission rights for the *Late Show* and the *Late Late Show*. Accordingly, the Judges find that the MPAA, as CBS's authorized representative, and not IPG, may claim royalties to these titles.

h. Martha Stewart Living

IPG challenges MPAA's attribution of the program "*Martha Stewart Living*" to CBS Broadcasting. IPG offers a search result from the Copyright Office's online catalogue that constitutes an electronic record of a document recordation naming Martha Stewart Living Omnimedia, Inc. (MSLO) in connection with the title *Martha Stewart Living*. Ex. IPG-P-026. IPG represents MSLO for the year 2000 only. IPG WDS, Ex. IPG-1, at 4.

As discussed above, the Copyright Act does not accord a record of a recorded document with any particular evidentiary weight. This particular electronic record describes a "Collateral

²⁶ The Judges discussed Mr. Galaz's credibility at length in the Final Determination in the 2000-2003 cable distribution proceeding. *See Distribution of the 2000, 2001, 2002 and 2003 Cable Royalty Funds*, Docket No. 2008-2 CRB CD 2000-2003 (Phase II), 78 Fed. Reg. 64984, 65000 (Oct. 30, 2013). Mr. Galaz remains problematic as a witness both for the reasons articulated in that decision, and because of the false testimony he gave in the preliminary hearing in this proceeding.

Assignment of Copyrights” that was executed and recorded in 2005 between MSLO and Warner Home Video, Inc. Ex. IPG-P-026. It appears to indicate that MSLO assigned a security interest in *Martha Stewart Living* and six other titles. *Id.* While this record reasonably supports an inference that MSLO was the copyright owner of *Martha Stewart Living* in 2005 (several years after the year that IPG is claiming), it does not provide any indication about the program’s syndication or the appropriate party to claim retransmission royalties.

To rebut IPG’s challenge, MPAA offers a letter from Sanford I. Kryle, Senior Vice President and Associate General Counsel of CBS Broadcasting, Inc. Ex. 348. Mr. Kryle states that “CBS is the exclusive syndicator of *Martha Stewart Living* for the 2000 royalty year, and asserts entitlement to statutory license royalties on that basis.” *Id.* at 1. To substantiate this claim, Mr. Kryle attaches redacted copies of two agreements between Eyemark Entertainment, a CBS subsidiary, and Time TV Ventures Productions, Inc., concerning the production and distribution of *Martha Stewart Living*. Paragraph 1(a) of the attached “Distribution Agreement” states that CBS was granted the exclusive right to “distribute, license, exhibit, publicize, advertise, and market in first-run syndication television” the program, *Martha Stewart Living*, within the United States for a term that includes the 2000 royalty year. *Id.* at Exhibit 1, Distribution Agreement ¶1(a).

The Judges find MPAA’s evidence credible and persuasive as to CBS Broadcasting’s right to claim retransmission royalties. By contrast, IPG’s evidence is unhelpful. Accordingly, the Judges determine that MPAA, as CBS’s authorized representative, may claim 2000 satellite royalties for the program *Martha Stewart Living*. IPG may not.

i. Yesterday’s Children

IPG also objects to MPAA’s attribution to CBS of the program title “*Yesterday’s Children*” for purposes of claiming 2000 satellite royalties. IPG introduced a declaration of John Cosgrove, CEO of Cosgrove-Meurer Productions (CMP), stating that CMP produced and owns²⁷ *Yesterday’s Children*, and professing “no understanding as to why CBS Broadcasting, Inc. would make claim for” the program. Ex. IPG-P-027, at ¶4.

MPAA offers the correspondence from Mr. Kryle referred to above, which flatly contradicts Mr. Cosgrove’s declaration. Ex. 348. Mr. Kryle includes a redacted copy of an agreement between CBS Entertainment, Inc. and CMP. Under the agreement, CMP grants CBS the right of network distribution in the U.S., including by direct satellite transmission. The agreement specifies that CMP “shall have no right whatsoever to share in any revenues or proceeds (including any profits) derived from any Network Broadcasts or any non-Network exhibitions” of the program. *Id.*, Exhibit 2, at ¶6.

The Judges find the agreement attached to Mr. Kryle’s letter to be sufficient evidence to rebut Mr. Cosgrove’s Declaration. Accordingly, the Judges determine that MPAA, and not IPG, may claim retransmission royalties for *Yesterday’s Children*.

²⁷ Significantly, Mr. Cosgrove struck out “and distributes” in his declaration, implicitly acknowledging the existence of a third-party distributor or syndicator.

j. Game for Anything: The Strength of Women

IPG challenges MPAA's attribution to American Broadcasting Companies, Inc. of the title "*Game for Anything: The Strength of Women*," which IPG claims on behalf of Freewheelin' Films, Ltd. IPG offers the declaration of Rodney Jacobs, an authorized representative of Freewheelin' Films, Ltd. and New Vision Syndication, Inc.,²⁸ as evidence that Freewheelin' Films is the owner and distributor of *Game for Anything: The Strength of Women*, and that IPG is its authorized representative. Ex. IPG-P-028. MPAA did not controvert this evidence. The Judges find Mr. Jacobs's declaration to be sufficient evidence to overcome the presumption that the MPAA's claim is valid. Accordingly, the Judges **GRANT** IPG's challenge and find that IPG, and not MPAA, is authorized to claim royalties for the title *Game for Anything: The Strength of Women*.

5. False Attribution of Ownership to Former Distributors

IPG accuses MPAA of falsely attributing copyright ownership to former distributors of programming. This is a case of the story failing to live up to the promise of the headline.

IPG's challenge is based on a single program title—"Critic Gitters"—that MPAA attributes to Litton Syndications (Litton), and that IPG attributes to Watercourse Road Productions LLC (Watercourse). On the basis of this one title, IPG asks the Judges to conclude that all of MPAA's claims on behalf of Litton are "either unreliable, or fraudulent" and should be dismissed. IPG WRS to MPAA Claims, at 16.

IPG offered the declaration of Tom Moyer, principal of Watercourse, as evidence that Watercourse, and not Litton, is entitled to claim retransmission royalties for the years covered by this proceeding. Mr. Moyer states that "'Critic Gitters' was initially distributed by a third-party syndication company, Litton Syndication, during the 1996-1997 broadcast season, but after one season Watercourse Road Productions assumed this function, and self-distributed the program." Ex. IPG-P-029, at 1.²⁹ All of the years covered by this proceeding are after the period when Litton was syndicator for *Critic Gitters*. MPAA did not offer any evidence to rebut Mr. Moyer's declaration. Accordingly, the Judges find that IPG is entitled to claim retransmission royalties on behalf of Watercourse for *Critic Gitters*.

The Judges **DENY** IPG's request to dismiss all claims on behalf of Litton, however. The misattribution of this single program title falls far short of demonstrating that all Litton claims are unreliable, much less "fraudulent."

²⁸ IPG represents both entities in this proceeding.

²⁹ Mr. Moyers goes on to state that "no party other than Watercourse Road Productions is entitled to make claim for 2000-2003 cable retransmission royalties other than Watercourse Road Productions." *Id.* While Mr. Moyers's statement, which was prepared for the 2000-2003 cable distribution proceeding, focuses on claims for cable retransmission royalties in 2000-2003, the Judges find that it bears on the claims in this proceeding. This statement is consistent with, and corroborative of, the sentence quoted in the text. It supports the Judges' conclusion that Litton's syndication arrangement with Watercourse, and its entitlement to claim retransmission royalties, ended with the 1996-1997 broadcast season.

6. Attribution of Ownership to Parties Providing Production Services

IPG contends that the program “*Jaw Droppers*,” that MPAA claims on behalf of Hawthorne Communications, is owned by Global Response LLC. IPG contends that Hawthorne provided production services as an employee for hire, and is thus not entitled to claim retransmission royalties. Again, IPG’s broad accusation of misconduct on the part of MPAA comes down to a challenge to a single program title.

IPG offers the declaration of Steven Hoyt, an authorized representative of Global Response, as evidence that Global Response is the owner and distributor of *Jaw Droppers*. Ex. IPG-P-031, at ¶4. Mr. Hoyt states that Global Response retains the right to claim retransmission royalties, and that IPG represents Global Response in these proceedings. *Id.* at ¶3. He explains that Hawthorne was paid for production services, but does not own the program.

MPAA offers no evidence to rebut IPG’s contentions. The Judges find that IPG’s evidence supports a conclusion that Global Response retains the right to claim retransmission royalties for *Jaw Droppers*, rebutting the presumption that MPAA’s claim is valid.³⁰ Accordingly, the Judges find that IPG, and not MPAA, may pursue claims for the program *Jaw Droppers*.

The Judges **DENY** IPG’s request to dismiss all MPAA claims on behalf of Hawthorne Communications. Misattribution of this single program title is not a sufficient basis to conclude that all claims on behalf of Hawthorne are unreliable, much less “fraudulent.”

7. Attribution of Ownership to Parties Unconnected to a Program’s Production, Distribution or Ownership

IPG contends that MPAA claims several program titles on behalf of entities that are wholly unrelated to the programs. IPG’s first challenge is with respect to a group of related titles: “*Healthy Living*” and “*Healthy Living: Mysteries of the Mind*.”³¹ See IPG WRS to MPAA Claims, at 16-17; Ex. IPG-P-032. IPG’s second challenge is with respect to a program entitled “It’s a Miracle.”

MPAA attributes *Healthy Living* and *Healthy Living: Mysteries of the Mind* to Trans World International, Inc. (TWI) (now known as International Management Group, Inc.). See Ex. 352. IPG alleges that IWV Media Group, Inc. (IWV) owns these titles. See IPG WRS to MPAA Claims, at 16-17.

IPG offers the declaration of Maureen Millen, an authorized representative of IWV, to support its position. Ms. Millen avers that IWV “produced, distributed and owns” the *Healthy*

³⁰ The Judges reach no conclusion as to whether Hawthorne is an “employee for hire.” IPG’s conclusory statements in its WRS, see IPG WRS to MPAA Claims, at 16, and the facts stated in Mr. Hoyt’s declaration provide an insufficient basis for the Judges to determine whether the relationship between Hawthorne and Global Response falls within the criteria set forth in the statutory definition for a “work made for hire” in section 101 of the Copyright Act.

³¹ During the hearing IPG attempted to cast doubt on MPAA’s claim to the title “*Healthy Living: Parenting and Beyond*.” 12/11/15 Tr. at 108-12 (Saunders). IPG did not interpose a challenge to this title in its WRS to MPAA Claims or any exhibit thereto. In accordance with the Judges’ September 23, 2013 *Notice of Participants, Commencement of Voluntary Negotiation Period, and Case Scheduling Order* in this proceeding, IPG’s challenge to this title is deemed waived.

Living and *Healthy Living: Mysteries of the Mind* series. Ex. IPG-P-032 at ¶4. She also states that IPG represents IWV in these proceedings, and that IWV has never authorized TWI to collect retransmission royalties for any IWV programming. *Id.* at ¶5.

MPAA offers correspondence from Philip R. Hochberg, counsel to TWI, to rebut IPG's evidence. Mr. Hochberg observes "It appears that IPG is asserting entitlement to statutory license royalties for *a different work with a similar title* than the work claimed by TWI." Ex. 352, at 2 (emphasis in original). He attaches a printout from the website "www.healthyliving4u.com," that describes a 14-episode television series hosted by the actress Jane Seymour. *Id.* at Exhibit 3.³² The website describes IWV's role in the creation of the series: "Healthy Living, is spearheaded by IWV Media Group's VP and Executive Producer Maureen Millen, who created the unique financing, marketing and distribution package that made the making of this series possible." *Id.* None of the 14 episodes is entitled "*Healthy Living: Mysteries of the Mind*." *Id.* Mr. Hochberg concludes that "the IWV work *Healthy living* is a PBS program starring Jane Seymour. Although the IWV work also has the title *Healthy Living*, the two works are entirely different." *Id.* at 2.

In addition to the website printout, Mr. Hochberg attaches two agreements between TWI and third parties regarding the production and ownership of *Healthy Living* and *Healthy Living: Mysteries of the Mind*. *Id.* at Exhibits 1, 2. The copies of the agreements, however, are unsigned. The Judges will not consider them.

MPAA also introduced a copy of the Certificate of Entitlement that Mr. Hochberg executed on behalf of TWI, attesting to TWI's entitlement to claim retransmission royalties for a number of titles that begin with "Healthy Living" for royalty years 2003-2005. Ex. 345. None of the titles in Mr. Hochberg's certification is the same as those identified on the healthyliving4u website.

Considering the totality of MPAA's evidence, and weighing it against Ms. Millen's declaration, the Judges conclude that the parties are claiming separate, similarly titled works.³³ IPG may pursue claims for retransmission royalties for the *Health Living* series hosted by Jane Seymour. MPAA may pursue claims for the *Healthy Living* titles certified by Mr. Hochberg. The Judges thus **DENY** IPG's request to dismiss all MPAA claims on behalf of TWI.

Regarding the title *It's a Miracle*, IPG attributes this program to Questar, Inc. and MPAA attributes it to DTG Communications. IPG provides the declaration of Jonathan Plowman, an authorized representative of Questar, to support its position. MPAA does not offer any evidence to rebut Mr. Plowman's declaration. Accordingly, the Judges **GRANT** IPG's challenge and determine that IPG, and not MPAA, may claim royalties for *It's a Miracle*.

³² The description on the website corresponds with Ms. Millen's description of the series in email correspondence with Mr. Galaz as "Healthy Living with Jane Seymour. 14 x 30," i.e., 14 thirty-minute episodes. Ex. 632, at Bates No. IPG 4461.

³³ It appears that Ms. Millen was mistaken in asserting ownership to *Healthy Living: Mysteries of the Mind* in her declaration. She may have confused it with "*Healthy Living: Mind over Matter*," episode 6 of the series hosted by Jane Seymour. See Ex. 352, at Exhibit 3.

8. False Claims Asserted by Fintage House

IPG challenges claims asserted by MPAA by virtue of its representation of Fintage House, alleging that it has “firsthand familiarity” with false claims being asserted by Fintage House. Specifically, IPG avers that Fintage House (and thus MPAA) has no authority to claim retransmission royalties for “*The Bold and the Beautiful*,” because Fintage does not represent Bell-Phillips Television, the producer of that television series. Similarly, IPG alleges that Fintage House does not represent Televisa, S.A., TV Azteca, S.A. and EGEDA.

The only evidence that IPG cites to in its WRS to support these allegations is a declaration of Mr. Galaz *that the Judges did not admit into evidence*. Mr. Galaz did not testify on these allegations during the hearing.

IPG’s bald assertions in its WRS, without any evidentiary support, do not constitute a proper challenge to MPAA’s representation of Bell-Phillips, Televisa, TV Azteca and EGEDA. In accordance with the Judges’ September 23, 2013 *Notice of Participants, Commencement of Voluntary Negotiation Period, and Case Scheduling Order* in this proceeding, IPG’s challenge to these claimants is deemed waived. Moreover, MPAA introduced substantial evidence of Fintage House’s (and thus MPAA’s) representation of these claimants. Even if IPG had interposed a proper challenge, the evidence in the record would have been more than sufficient to establish MPAA’s representational authority. The Judges **DENY** IPG’s challenge.

9. Resolution of Remaining Conflicting Claims to Specific Program Titles

IPG alleges that “[t]here are 98 IPG-represented claimants for whom one or more of their claimed programs are also claimed by the MPAA, comprising 1,872 program/year combinations.” IPG WRS to MPAA Claims, at 17. IPG argues that, owing to deficiencies in MPAA’s process for confirming program ownership, all such conflicting claims should be awarded to IPG. *Id.*

IPG’s proposal is problematic for several reasons. First, as discussed above, the Judges do not find MPAA’s certification process to be deficient or inferior to IPG’s process. It cannot, therefore, serve as a basis for adopting a default rule that all conflicts be resolved in IPG’s favor.

Second, MPAA’s claims are entitled to a presumption of validity. IPG’s claims are not, owing to Mr. Galaz’s misconduct in this proceeding. To the extent that a default rule is needed to address conflicting claims to program titles in this proceeding in the absence of further evidence, it is that MPAA’s claims will prevail over IPG’s.

Third, IPG has not identified the claimants and programs it is challenging with this argument, either in its WRS or in the spreadsheet of claims challenges it provided in response to the Judges’ November 6, 2014 *Order Requiring Parties to Submit Claims Objections in Spreadsheet Format*.

The Judges **DENY** IPG’s request to resolve all conflicting claims in its favor. Moreover, in view of IPG’s failure to provide any evidence why MPAA’s claims should be dismissed, and its failure to identify the claims that it is challenging, the Judges do not consider this to be a proper challenge. In accordance with the Judges’ September 23, 2013 *Notice of Participants, Commencement of Voluntary Negotiation Period, and Case Scheduling Order* in this proceeding, IPG’s challenge to these 1,872 program/year combinations is deemed waived.

B. IPG Challenges to SDC Claims

IPG asks the Judges to dismiss Word of God Fellowship, Inc., d/b/a/ Daystar Television Network (Daystar) and Billy Graham Evangelistic Association (BGEA) as claimants in this proceeding, arguing that those entities have withdrawn their petitions to participate and are thus no longer participants in this proceeding. IPG WRS to SDC Claims, at 3. The SDC included those entities and their respective programs in its WDS. *See* SDC WDS, at 1 n.1; Sanders WDT, at Appendix C. IPG's objection to continued participation by Daystar and BGEA after those claimants joined the SDC claimant group is not well taken. The claims of those claimants had been (1) timely filed and (2) identified in a PTP. IPG did not challenge the propriety of either prerequisite to participation; thus, the claims remain valid and the claimants remain full participants in the present proceeding.

The SDC argues that once Daystar and BGEA reached a settlement with the SDC, they became "Settling Devotional Claimants" themselves. 12/16/14 Tr. at 156 (SDC Closing Argument). The withdrawal of their petitions to participate was not an abandonment of their claims to retransmission royalties; it was, rather, a discontinuation of their separate participation in this proceeding. Thenceforth their participation was as part of the coalition of claimants describing itself as the SDC.

The events leading up to this challenge are as follows. In January, 2014, the SDC, Daystar, BGEA and the broadcaster claimants (the National Association of Broadcasters (NAB) in the cable case and the Broadcaster Claimants Group (BCG) in the satellite case) notified the Judges that they had reached a settlement. Exs. IPG-P-001, 002, 003, 004. NAB and BCG filed notices of withdrawal of their petitions to participate on April 29, 2014. Exs. IPG-P-005, 006. Daystar and BGEA followed suit on May 6, 2014, three days before the SDC filed its WDS. Exs. IPG-P-007, 008, 009, 010. As noted above, the SDC included Daystar and BGEA in their WDS.³⁴

After IPG challenged Daystar's and BGEA's continued participation in this proceeding as part of the SDC, Daystar and BGEA each filed an Amended Notice of Withdrawal with the Judges. Exs. 630, 631. These purported amendments seek to clarify that Daystar and BGEA reached a settlement with the SDC only, they continued to have a controversy with IPG, and their prior filings were intended only to withdraw their separate participation in the proceeding. *Id.* Daystar and BGEA each declared its intention to continue its participation in the proceeding as one of the Settling Devotional Claimants. *Id.*

The Copyright Act prescribes the means of calling for petitions to participate, 17 U.S.C. § 803(b)(1)(A)(i), the deadline for filing petitions, *id.* § 803(b)(1)(A)(ii), the circumstances when the Judges may accept a late petition, *id.*, and the consequences of filing a late petition. *Id.* The statute also describes, in a general way, the required contents of a petition to participate. *Id.* § 803(b)(1)(B). The Judges' procedural rules essentially track the statutory provisions. *See* 37 C.F.R. § 351.1. The statute and the rules, however, are silent regarding withdrawals of petitions to participate and amendments of such withdrawals. To resolve this dispute the Judges will look to the policies underlying chapter 8 of the Copyright Act and the Judges' procedural rules.

³⁴ None of the NAB or BCG claimants is listed in the SDC's WDS, and IPG's challenge does not include them.

A key element of chapter 8 that comes into play in resolving IPG’s challenge is the strong congressional policy favoring settlements. This dispute arises in the context of a settlement between SDC, on the one hand, and Daystar and BGEA on the other. Congress intended chapter 8 to encourage such settlements. This is apparent from the structure that Congress prescribed for proceedings, which affords multiple opportunities for parties to settle. *See, e.g.*, 17 U.S.C. §§ 801(b)(7), 803(b)(3), (6)(C)(x). It is also clear from the legislative history. *See, e.g.*, H.R. Rep. No. 108-408, at 30 (2004). The statute authorizes and strongly encourages the Judges to give effect to settlement agreements between or among parties. 17 U.S.C. § 801(b)(7). Accordingly, the Judges will give effect to the intent of the settling parties as reflected in the record.

Daystar’s Notice of Withdrawal of Petition to Participate in Phase II Cable Royalty Proceedings (Notice of Withdrawal), and its substantially identical filing in the satellite proceeding, states that Daystar withdraws its petition to participate, and that “[i]n view of a confidential settlement agreement between Daystar and the Settling Devotional Claimants concerning Daystar’s claims to Phase II Devotional Claimants royalties, no further controversy remains to be resolved with respect to such claims in this proceeding, and Daystar relinquishes all of its interests in the 2004-2009 Funds.” Ex. IPG-P-007, at 1.

On its face, Daystar’s Notice of Withdrawal unequivocally relinquishes any claim on the funds at issue in this proceeding. The context of Daystar’s Notice, however, tells a somewhat different story. First, the Judges must consider the stated intentions of the parties to the settlement as expressed in the notices they filed with the Judges in January, 2014. The SDC’s Notice of Settlements and of Controversies, which was authorized by Daystar, advised the Judges that the SDC had reached an “agreement in principle” with Daystar and anticipated that Daystar would withdraw its separate petition to participate once the settlement agreement was fully executed. *See* Ex. IPG-P-001, at 1. The SDC Notice also stated clearly that no settlement had been negotiated with IPG. *Id.* at 2. Daystar’s settlement and withdrawal was with respect to the SDC, not IPG.

Second, Daystar sought to clarify its position by filing an Amended Notice of Withdrawal, after the participants filed WDSs and WRSs on claims. Before considering the content of the Amended Notice of Withdrawal, the Judges must determine whether that filing was in order. Since the statute and rules neither permit nor prohibit such a filing, the Judges will exercise their discretion under 17 U.S.C. § 801(c) and accept the Amended Notice of Withdrawal for these reasons: (1) the Amended Notice of Withdrawal provides the Judges with valuable evidence of the settling parties’ intent, and (2) IPG has not demonstrated—or even alleged—that it would be prejudiced by the Judges consideration of this document.³⁵

³⁵ The Judges note that a common element of the statutory provisions concerning petitions to participate is avoiding prejudice to other parties. For example, the Judges are adjured not to accept a late petition to participate if doing so would cause prejudice to participants that have already filed petitions. 17 U.S.C. § 803(b)(1)(A)(ii). The Judges also may not accept petitions filed fewer than 90 days before the due date for written direct statements. *Id.* To do so would be presumptively prejudicial because it could potentially require the other participants to alter their litigation strategy when preparation of their cases is well under way. In the present circumstances, however, IPG had notice of the settlement between the SDC and Daystar five months before WDSs were due. To the extent, if any, that IPG relied upon the wording of Daystar’s Notice of Withdrawal, it could only have relied on it for the three days between the filing of the Notice and the filing of the SDC’s direct case, which named Daystar as one of the Settling Devotional Claimants. IPG was fully apprised of the composition of the SDC, and the program titles they were claiming, during the entirety of the discovery period.

In its Amended Notice of Withdrawal, Daystar reiterates that it settled with the SDC only, and states that its original Notices of Withdrawal “were intended to withdraw its separate Petitions to Participate.” Ex. 630. Daystar states unequivocally that it “maintains its controversies with Independent Producer’s Group and continues to participate as one of the Settling Devotional Claimants” *Id.*

Based on the foregoing evidence, the Judges determine that Daystar did not withdraw from the case entirely or relinquish its claim to retransmission royalties. Daystar merely terminated its separate participation and threw in its lot with the SDC. The Judges, therefore, **DENY** IPG’s request to dismiss Daystar’s claims.

BGEA’s Notice of Withdrawal of Petition to Participate in Phase II Cable Royalty Proceedings regarding Devotional Claimants’ Royalties (Notice of Withdrawal), and its substantially identical filing in the satellite proceeding, states that “[i]n light of the confidential settlement agreement entered into between BGEA and the Settling Devotional Claimants to Phase II Devotional Claimants’ royalties for years including 2004 through 2009 (“2004-2009 Funds”), no further controversy needs to be resolved with respect to BGEA’s claims and the Settling Devotional Claimants’.” Ex. IPG-P-009, at 1.

On its face, BGEA’s Notice of Withdrawal is only with respect to its controversy with the SDC. This is confirmed by both the SDC’s Notice of Settlement and BGEA’s Amended Notice of Withdrawal. Exs. IPG-P-001, 631. Accordingly, the Judges determine the BGEA did not withdraw from the case entirely or relinquish its claim to retransmission royalties. BGEA merely terminated its separate participation and became one of the Settling Devotional Claimants. The Judges **DENY** IPG’s request to dismiss BGEA’s claims.

V. MPAA Objections to Claims Presented by IPG

MPAA has set forth nine separate categories of objections to claims presented by IPG. In its WRS, the MPAA has organized these nine categories in sections identified as: A(1), A(2), A(3), (B), (C), D(1), D(2), E and F. Several of the challenged IPG claims fall within more than one of these categories. *See* MPAA WRS (Claims) App. A. For ease of organization, the Judges utilize this format in Exhibit A, *infra*, to set forth their decision to allow or disallow the individual IPG claims challenged by the MPAA. In the immediately following text below, the Judges generally describe these nine categories of MPAA objections, IPG’s responses and the Judges’ broad conclusions with regard to these categorized objections.³⁶

A. Claimants Dismissed in the 2000-03 Proceeding

1. Claimants Dismissed in the March 21, 2013 Order Entered in the 2000-03 Proceeding

In the 2000-03 cable Phase II proceeding, the Judges dismissed numerous IPG claimants on one or more bases. *See* March 21, 2013 Order at Ex. B therein. In the present proceeding, IPG is pursuing royalties for thirteen of the claimants who were dismissed pursuant to the March 21, 2013 Order. MPAA asserts that IPG “failed to provide any additional evidence to compel a

³⁶ The rulings in Exhibit A, *infra*, are determinative with regard to each discrete challenge, notwithstanding the general observations set forth in this section of the Order.

different conclusion” as to those thirteen entities in the present proceeding, and that IPG is merely attempting “to relitigate the Judges’ ruling in the March 21, 2013 Order as to the entities concerned.” MPAA WRS (Claims) at 22.

IPG argues, on the other hand, that it has produced evidence in the present proceeding that it did not introduce in the 2000-03 proceeding and that it did not possess when the hearing in that Phase II Proceeding was conducted in 2013. 12/8/14 Tr. at 31-33 (IPG Opening Statement).

The Judges agree that, in the absence of any new evidence from IPG or other appropriate basis to contradict the Judges’ findings and conclusions contained in the March 21, 2013 Order, the findings and conclusions set forth in that Order are applicable and binding in the present proceeding. Section 803(a) of the Act provides that the Judges “shall act ... on the basis of ... prior determinations ... of ... the Copyright Royalty Judges.” That statutory provision obligates the Judges in the present proceeding to apply the findings and conclusions set forth in the March 21, 2013 Order in the present proceeding, when the relevant facts in both proceedings are the same.³⁷

On the other hand, the Judges agree with IPG that any *new* record evidence introduced by IPG with regard to these thirteen claimants must be evaluated to determine whether the totality of the evidence supports IPG’s claims on behalf of any of these thirteen claimants. In those instances in which IPG (or MPAA) has introduced new record evidence (*i.e.*, evidence that was not in the record when the March 21, 2013 Order was entered), the Judges weigh the evidence *de novo*, and do not rely upon the fact that they had dismissed a particular claim pursuant to that Order in the prior proceeding. The claimants whose claims are the subject of this objection and the disposition of their claims in response to this objection are identified in Exhibit A as those for which MPAA asserted Objection “A(1).”

2. Claimants Dismissed in the Final Determination in the 2000-03 Proceeding

Subsequent to the March 21, 2013 Order in the 2000-03 cable Phase II proceeding, the Judges dismissed additional IPG claimants on one or more bases in the Final Determination. 2000-03 Final Determination, 78 Fed. Reg. at 64989-90. In the present proceeding, IPG is pursuing royalties for ten of the claimants who were dismissed pursuant to that Final Determination. MPAA asserts that for eight of these ten entities, “IPG has produced no evidence in this proceeding warranting a different ruling” than in the 2000-03 Final Determination. MPAA WRS (Claims) at 28.³⁸

IPG argues that in this category as well it has produced evidence in the present proceeding to support these claims that it did not introduce in the 2000-03 proceeding and that it did not possess when the hearing in that Phase II Proceeding was conducted in 2013. 12/8/14 Tr. at 31-33 (IPG Opening Statement).

³⁷ The Judges’ March 21, 2013 Order merged into the Final Determination in the 2000-03 proceeding. *See* 5 U.S.C. § 704 (“A preliminary, procedural, or intermediate agency action or ruling not directly reviewable is subject to review on the review of the final agency action.”).

³⁸ MPAA argues that a different finding than the finding in the 2000-03 Final Determination should be rendered with regard to two of the ten entities—BBC Worldwide and BBC Worldwide Americas, Inc. MPAA WRS (Claims) at 28-29.

As with claims dismissed in March 21, 2013 Order, the Judges agree that, in the absence of any new evidence from IPG to contradict the Judges' findings and conclusions contained in the Final Determination, or other appropriate basis, the findings and conclusions set forth therein are applicable and binding in the present proceeding. *See* section V.A.1, *supra*. The Judges evaluate any *new* record evidence introduced by IPG with regard to these thirteen claimants to determine whether the totality of the evidence supports IPG's claims on behalf of any of these thirteen claimants. The Judges weigh any new record evidence *de novo*, and do not rely upon the fact that they had dismissed a particular claim pursuant to that Order in the prior proceeding. The claimants whose claims are the subject of this objection, and the disposition of their claims in response to this objection, are identified in Exhibit A as those for which MPAA asserted Objection "A(2)."

3. The FIFA Claims

In its WRS (Claims), MPAA noted IPG had previously maintained a claim on behalf of FIFA in both the Program Supplier and Joint Sports categories. *Id.* at 29. On August 29, 2014, the Judges entered an order in response to a motion for summary adjudication filed by the Joint Sports Claimants, dismissing IPG's FIFA claim in the Joint Sports Category. *August 29, 2014 Order* at 5-8. MPAA urges the Judges to dismiss any remaining FIFA claims by IPG in the Program Supplier category pursuant to the Judges' analysis in their August 29th Order.

In the hearing on claims in the present proceeding, IPG did not rebut MPAA's argument, nor did IPG offer any evidence or make any arguments in support of any claims on behalf of FIFA. *See* Ex. P- 115. Thus, to the extent IPG may have previously asserted any FIFA-related claims, there are no such claims now pending before the Judges.

Accordingly, the Judges consider MPAA's request for dismissal of IPG's FIFA-related claim as moot.³⁹

B. Claimants that, according to MPAA, Terminated or Disavowed IPG's Representation.

In the 2000-03 proceeding, the Judges held that "[w]here a claimant has unambiguously manifested that it no longer wants a particular entity to represent its interests in these proceedings, the Judges will honor that request." 78 Fed. Reg. at 64988 .

In the present proceeding, MPAA identified fifteen claimants that IPG claimed to represent in this proceeding but that had either terminated or disavowed IPG's representation. *See* MPAA WRS (Claims) at 30.

IPG argues, as it had in the 2000-03 proceeding, that under its Representation Agreement with its principals, it could still recover royalties (and its own commissions) on behalf of claimants that had terminated IPG's authority to seek and collect royalties for royalty years that preceded the attempted termination. 12/16/14 Tr. at 76. As in the prior proceeding, the Judges conclude that if a claimant has provided notice of an immediate termination of its agent, the Judges will honor the claimant's intent, and the termination becomes effective immediately to

³⁹ If the Judges had not found the FIFA-related claims moot, they would have dismissed IPG's claim because IPG did not possess authority to continue to represent FIFA, for the reasons stated in the Judges' August 29, 2014, Order entered in the present proceeding.

preclude further action by the agent under sections 111 and 119 of the Act. The issue of whether a claimant has breached its contract with IPG by electing such an immediate termination is an issue of contract law that IPG and the claimant may seek to resolve pursuant to litigation under state law in a court of competent jurisdiction. *See* 2000-03 Final Determination, 78 Fed. Reg. at 64988.

Accordingly, the Judges shall dismiss those claims pursued by IPG as to which the claimant has either terminated or disavowed IPG's representation. To the extent, if any, that the evidence fails to support a finding of such termination or disavowal, MPAA's requests for dismissal of the claims of that claimant, on this basis, are rejected. The Judges identify their specific decisions relating to each claimant in Exhibit A as those for which MPAA asserted Objection "B."

C. IPG Claimants for Whom MPAA Alleged IPG Did Not Produce Documents to Support its Claims Authority

According to MPAA, IPG failed to produce "executed representation agreements" or "other credible evidence" of IPG's representative authority with regard to fifteen purported claimants. MPAA WRS (Claims) at 31. In the 2000-03 proceeding, the Judges held that the absence of such agreements or credible evidence with regard to such claimants precluded IPG from representing those claimants. March 21, 2013 Order at 3-5.

In recognition of that prior holding, IPG attempted to locate Representation Agreements—and indeed did locate a number of such contracts—that satisfied the Judges' requirements with regard to the evidence necessary to prove IPG's representative authority. IPG Exs. P-106; P-115. For those claimants as to whom IPG introduced Representation Agreements into evidence, those claimants and their claims cannot be dismissed on this basis, and MPAA's objection in this regard will be overruled. The specific decisions relating to each such claimant are identified in Exhibit A as those for which MPAA asserted Objection "C."

D. IPG Claimants that Received Requests from IPG to Execute Acknowledgments

1. Claimants for Whom IPG Produced Recent Executed Confirmations or Acknowledgements to Support its Authority

MPAA identified twenty entities for which the MPAA alleges IPG produced only recent confirmations, acknowledgments or other email confirmations, executed in 2014 by the twenty claimants. MPAA WRS (Claims) at 35. The typical form document executed and returned to IPG by the claimants stated as follows.

ACKNOWLEDGEMENT OF REPRESENTATION

U.S. Cable and Satellite Retransmission Royalties

Calendar Years 1999-2009

To whom it may concern:

By execution of this document, I hereby confirm and acknowledge the undersigned claimant's engagement of Worldwide Subsidy Group LLC dba Independent Producers Group ("IPG") for the collection of U.S. cable and satellite retransmission royalties for the following years in which IPG has made claim on behalf of the undersigned.

Calendar Years: [TO BE INSERTED]

Claimant: [TO BE INSERTED]

(Typed or printed name)

(Title)

(Date)

See Ex. IPG-P-102.

MPAA argues that the Judges should disregard these “Acknowledgements” because IPG solicited them through e-mails “touting ... the huge dollar amount of available royalties [and] warning of forfeiture of such royalties ... even absent any specific evidence of an agreement or authority for IPG to act on the claimants’ behalf.” MPAA WRS (Claims) at 34. MPAA also argues that these “Acknowledgements” fall within the category of deficient evidence described in the 2000-03 proceeding as “ambiguous indicia of retroactive ratification of asserted authority ... insufficient to establish that authority was in place when a claim was filed.” *Id.* at 33 (quoting March 21, 2013 Order at 5, n.10).

The Judges disagree with MPAA’s reasoning and find that such “Acknowledgements” constitute sufficient evidence of the representative capacity of IPG for the term specified in the “Acknowledgement.” The Judges therefore overrule MPAA’s objection and decline to order the dismissal of the claims of these twenty entities on the basis of this objection.

More particularly, the Judges reject MPAA’s argument that the text of IPG’s e-mails to claimants seeking executed “Acknowledgements” diminished the probative value of the returned and executed “Acknowledgements.” Although it is *possible* that some claimants might have executed such “Acknowledgements” in order to receive a windfall that they had not previously and timely authorized IPG to pursue, there is no evidence that elevates such a possibility beyond mere speculation. The Judges cannot assume without supporting evidence that each (or any) such claimant has dissembled in order to receive an improper windfall. In this regard, the Judges cannot bootstrap doubts regarding the credibility of IPG and Mr. Galaz⁴⁰ to the claimant-entities for whom no credibility questions exist.

The Judges also reject MPAA’s argument that these “Acknowledgements” constitute “[a]mbiguous indicia of retroactive ratification.” MPAA WRS (Claims) at 33. IPG obtained these executed “Acknowledgements” to prove the existence of agreements in cases in which neither IPG nor the claimant had a copy of an original Representation Agreement. Moreover, IPG solicited such “Acknowledgements” in response to the Judges’ rejection of certain IPG claimants in the 2000-03 proceeding because *other* types of documents, such as extension letters without the agreement allegedly extended, were too ambiguous to demonstrate the existence of a prior agreement. See 12/8/14 Tr. at 217-18 (Galaz).

There was no evidence indicating that these “Acknowledgements” had not been properly executed by the claimants and these documents state the time period to which they apply and the types of retransmitted signals (cable and satellite) to which they refer. As a

⁴⁰ See *supra* note 26.

matter of law, parties to a prior agreement are capable of ratifying a prior agreement and thereby according it legal effect. *See Drexel Burnham Lambert Inc. v. Commodity Futures Trading Commission*, 850 F.2d 742, 750 (D.C. Cir. 1988) (“Knowledge of the relevant facts and an intent to approve the unauthorized action after its occurrence [are the] preconditions to ratification.”). This principle is particularly relevant in the present proceeding, in which agreements date back well more than a decade in many instances and therefore may have been destroyed or discarded.

The specific decisions relating to each such claimant are identified in Exhibit A as those for which MPAA asserted Objection “D(1).”

2. Claimants that Failed to Execute Acknowledgements Solicited by IPG

MPAA seeks the dismissal of the claims of 82 purported IPG-represented claimants because they did not return to IPG the “Acknowledgements” or other forms of confirmation that IPG had requested. MPAA WRS (Claims) at 35-37 and App. B thereto. MPAA does not distinguish between those claimants for whom there is record evidence of a Representation Agreement with IPG and those claimants for whom no such evidence exists.

When there is no evidence of a Representation Agreement, a claimant’s failure to return the requested “Acknowledgement”—combined with the removal of the presumption of validity with regard to IPG’s asserted claims—prevents the Judges from concluding that IPG has demonstrated the validity of these claims. However, the Judges reject MPAA’s attempt to extend this argument to claimants for whom other sufficient record evidence exists of their agreement with IPG. Simply put, the “Acknowledgement” or other confirmation sought by IPG, when other sufficient record evidence of an agreement exists, would be merely cumulative—a “belt and suspenders” combination of evidence—such that the Judges cannot infer the lack of an ongoing agreement from the absence of the confirmatory document.

The specific decisions relating to each such claimant are identified in Exhibit A as those for which MPAA asserted Objection “D(2).”

E. IPG Claimants that Failed to File a Claim

MPAA has identified 57 entities that failed to file a cable or satellite claim as to one or more royalty years. MPAA WRS (Claims) at 37 and App. C thereto. Sections 111 and 119 of the Act only allow copyright owners for whom claims have been timely filed to collect retransmission royalties. Accordingly, MPAA argues that the claims of these 57 entities must be dismissed.

IPG has not offered persuasive evidence or argument as to why the Judges should not dismiss these unfiled claims. Accordingly, the Judges **DISMISS** these claims.

Thirty-nine of these purported claims are satellite claims that IPG claims were timely filed for the 2008 satellite year. In section III.C.1, *supra*, the Judges explained the circumstances regarding IPG’s responsibility for failing to file 2008 satellite claims on behalf of claimants. The Judges incorporate by reference that explanation in this section as a basis for dismissing those claims, and add the following findings and conclusions.

IPG asserts that regardless of who is responsible for the omission of these 39 claimants from its 2008 satellite claim form, it is a harmless oversight because IPG utilized the identical

form—without the omitted satellite claims—to identify its 2008 cable claims. 12/16 Tr. at 95 (Counsel Boydston) (“The same list, exact same list was attached to both cable and satellite.”).

The Judges do not agree with IPG’s *ipse dixit* assertion that the list of claims attached to the filed *cable* claims comprises the same list that IPG had intended to file in connection with the 2008 *satellite* claims. Although the consecutive page numbers on the form used to identify IPG’s cable claims suggest that IPG *may* have intended to utilize the same numbered pages and the same claims in its 2008 satellite claims filing, the fact remains that the 2008 satellite filing does not contain the omitted 39 claims. The Judges are well within their discretion, if indeed not obliged, to apply their regulations strictly. *See Universal City Studios LLP v. Peters*, 402 F.3d 1238, 1241, (D.C. Cir. 2005) (claim for retransmission royalties received two days after the regulatory deadline may be properly rejected by the agency in its discretion, absent proof of timely mailing as required by a strict application of the applicable regulation). Therefore, the Judges hold that the failure by IPG to include the 39 claims in its 2008 satellite claims filing cannot be excused or cured by the possible inclusion of such claims on IPG’s 2008 cable claims.⁴¹

The specific decisions relating to each claimant are identified in Exhibit A as those for which MPAA asserted Objection “E.”

F. IPG Claimants that May Not Have Sufficiently Verified Their Authority to Collect Royalties for the Specific Titles Claimed by IPG

MPAA has identified twenty-four IPG-represented entities for whom the MPAA claims IPG failed to produce sufficient evidence of their authority to collect royalties for specific titles. More particularly, MPAA has alleged that for 14 of these entities IPG has produced no evidence that the titles IPG is claiming on their behalf are actually owned or controlled by that copyright owner. As to the other 10 of these twenty-four entities, MPAA alleges that the only evidence of title ownership or control produced by IPG comprises “internet searches” and other “research” that appear to have been conducted by IPG personnel. MPAA WRS (Claims) at 37-38.

Sections 111 and 119 of the Act limit the ultimate distribution of royalties to “copyright owners.”⁴² Thus, if a claimant does not own a claimed title, it is not an owner that can receive royalties. However, there is no verification process set forth in the statute or applicable regulations to verify a claimant’s ownership.

Thus, absent a challenge by an adverse party or some other facial doubts, the Judges may elect to afford the “presumption of validity” to the ownership or control of the relevant titles by the underlying claimants. However, as noted *supra*, the Judges have declined to afford IPG a “presumption of validity” with regard to the issues raised in this proceeding by its adversaries,

⁴¹ The Judges recognize that it is possible that their decision might prevent some or all of these 39 satellite claimants from receiving 2008 royalties to which they *might* have been entitled had IPG filed their claims. However, to the extent that IPG may have failed to file satellite claims for these 39 principals that it represented in 2008, those alleged claimants may (or may not) have legal recourse against IPG under their respective Representation Agreements with IPG. The Judges express no opinion on the merits of any such claims. However, even such otherwise *bona fide* claimants cannot avoid the preclusive effect in this proceeding of their decision to rely on IPG as their agent, and the subsequent failure of that agent to file their claims.

⁴² *See supra* note 18.

MPAA and the SDC. Accordingly, the Judges examine the evidence and consider the arguments regarding these copyright ownership and control issues by allocating the burden of production to IPG with regard to these twenty-four entities.

With regard to any entities for which IPG failed to produce any evidence that the titles were actually owned or controlled by the IPG-represented claimant it is clear that such claims must be dismissed.

With regard to those claims for which IPG conducted only “internet searches” (such as Internet Movie Data Base (IMDB) and other “research,” the Judges find that such claims of ownership or control are deficient. IPG introduced no evidence that these publicly available sources were authoritative or accurate, and IPG proffered no credible evidence or testimony that the documentation of these searches was undertaken in a reliable manner. Indeed, as MPAA notes, many of these documents are illegible. *See* MPAA WRS (Claims) at 38, n.140; MPAA Ex. 308 (Ex. 31 therein); 12/8/14 Tr. at 257-59.

However, the Judges have examined all *other* categories of record evidence introduced by IPG that may be supportive of its claims that sufficient evidence exists to demonstrate that any of these twenty-four entities owned or controlled the title claimed on their behalf. *See* IPG Exs. P-122 (represented programs allegedly identified within contracting documents); P-103 (allegedly represented programs previously provided to IPG); P-104 (alleged account statements); P-106 and P-108 (alleged correspondence regarding program titles). *See generally* IPG Ex. P-115 (identify IPG’s categories of evidence by alleged claimant). To the extent these exhibits contain documents confirming that IPG’s alleged claimants owned or controlled the programs at issue, those claims shall not be dismissed on this basis and, with regard to such claims, MPAA’s objection shall be overruled.

The specific decisions relating to each claimant are identified in Exhibit A as those for which MPAA asserted Objection “F.”

VI. SDC Objections to Claims Presented by IPG

A. Failure to File Claims

The SDC asserts an objection to 2008 satellite claims filed on behalf of Willie Wilson Productions, Inc. Jack Van Impe Ministries International, and Life Outreach International on the ground that IPG did not identify these claimants on the filed claim. These objections arise out of the same circumstances discussed in section V.E, *supra*. The Judges **GRANT** the SDC’s objections to these three claims for the same reasons articulated with respect to the 39 purported IPG claimants that MPAA challenged for not being included in IPG’s 2008 satellite claim.

B. Failure to Establish Authority

1. “Audiovisual Copyright Collection Societies”

The SDC seek to disqualify certain claims asserted by IPG on behalf of represented parties on the basis of the language in the IPG form Representation Agreement or Mandate Agreement. The SDC argue that engaging IPG to collect and administer funds “distributed by audiovisual copyright collection societies throughout the world” does not authorize IPG to collect and administer royalty funds from the Copyright Office. *See* SDC WRS at 11.

The SDC made the same argument in the 2000-03 cable distribution proceeding. Adopting the reasoning from that determination, the Judges **DENY** this objection by the SDC. *See* March 21, 2013 Order at 6.

2. Representation Agreements Dated “As of” a Valid Date

For this proceeding, IPG presented numerous Representation and Mandate Agreements that are statements of an agreement between IPG and its principals “as of” a stated date. In all but one instance,⁴³ neither the documents nor the signatures are otherwise dated. The SDC object to IPG’s representation of claimants alleging that the documents are insufficient to establish an existing relationship as of the date IPG filed claims for the various owners it purports to represent.

In the distribution determination relating to cable royalties deposited for the years 2000 through 2003, the Judges analyzed the issue of authority to act as an agent. *See* March 21, 2013 Order at 11-12. “While neither the Copyright Act nor the Judges’ rules governing this proceeding require that a *written* agreement be in place to authorize a designated agent to act on behalf of a claimant, the parties must manifest in some unambiguous manner that they intended for a principal/agent relationship to exist between them prior to or *as of* the date the agent filed the claim.” *Id.* at 12 (emphasis added). The current regulatory requirement for joint claims is that they contain “a declaration of the authority to file the claim....” *See* 37 C.F.R. § 360.3(b)(2)(vii) (rule adopted in 2005). In this proceeding, IPG has augmented its records, some of which were deemed insufficient in the prior (2000-03) proceeding, with agency agreements dated “as of” an appropriate date and with documents entitled “Acknowledgement of Representation” by which claimants “confirm and acknowledge” their engagement of IPG for royalty administration for the relevant years.⁴⁴

If IPG has submitted evidence of either a written agreement dated “as of” the relevant date or an acknowledgement by the principal that it engaged IPG for the relevant date(s), that evidence is sufficient to validate the claims IPG filed on behalf of the principals.

The Judges **DENY** the SDC’s objection to “as of” dating and *post hoc* acknowledgement of representation authority.

3. Specific Deficiencies

The SDC have made additional specific objections to certain claims. The Judges will address each of these in order.

a. Envoy Productions

The SDC object specifically to the 2001 satellite claim IPG filed on behalf of Envoy Productions. *See* SDC WRS at 12. The Mandate Agreement offered by IPG for Envoy Productions refers to 2000 satellite and cable royalties. It is signed, “AGREED AND ACCEPTED” on July 16, 2002. *See* Ex. SDC605 (RESTRICTED). This evidence is insufficient to support a claim for 2001 satellite royalties. IPG offered, however, additional evidence in the

⁴³ *See* Ex. SDC 627, 1999 Promark Television Representation Agreement, a term agreement, dated by signatory on July 16, 1999.

⁴⁴ *See* discussion in section V.D.1, *supra*.

form of an Acknowledgement of Representation signed by an officer of Envoy Productions, ratifying IPG representation for both cable and satellite proceedings for royalty year 2001. *See* IPG-P-066 at Bates 1143 (RESTRICTED). Consistent with the Judges' reasoning elsewhere in this ruling, that Acknowledgement is sufficient to validate IPG's claim on behalf of Envoy Productions for 2001 satellite royalties. Based on the new evidence, the Judges **DENY** the SDC request to disqualify the satellite claim on behalf of Envoy for 2001.

b. IWV Media Group 2002-09 (satellite), 2004-09 (cable)

IPG submits the same Representation Agreement in this proceeding as it presented in the 2000-03 proceeding. In the 2000-03 proceeding, the Judges disallowed claims filed by IPG for Healthy TV, Inc. and IWV Media Group. *See* March 21, 2013 Order, Ex. B at 3. During the preliminary hearing in the 2000-03 proceeding, Mr. Galaz testified that he "recreated" the IWV Representation Agreement, which was dated as of July 10, 2002, to replace a lost agreement. Mr. Galaz also testified that he annotated the agreement with his handwritten notation listing, *inter alia*, Healthy TV, Inc. *See* 12/5/12 Tr. at 545-550 (Galaz).

The SDC contend the Judges should reject these claims on the same basis as in the 2000-03 proceeding, *viz.*, that the documentation is insufficient to establish IPG's authority. *See* SDC WRS at 12-13; Exs. SDC 606, 627. In the prior proceeding, IPG attempted to validate the admittedly recreated agreement by reference to unconvincing extrinsic evidence. The evidence was not sufficient to overcome the faults in the document. In the present proceeding, however, IPG has provided an "Acknowledgement of Representation" signed by Ms. Millen. *See* Ex. IPG-P-065, Bates 1094. Consistent with the Judges' reasoning elsewhere in this ruling, that Acknowledgement is sufficient to validate claims IPG has asserted on behalf of IWV Media Group in this combined proceeding.

Accordingly, the Judges **DENY** the SDC's request to disallow IWV Media's claims on this basis.

c. Salem Baptist Church, Inc.

The SDC object to IPG claims on behalf of Salem Baptist Church, Inc. against any fund except the 2001 cable and satellite royalties. *See* SDC WRS at 13. The Judges denied IPG's claims on behalf of Salem Baptist Church for 2001-03 cable royalties. *See* March 21, 2013 Order at 9. IPG's evidence consists of a single Mandate Agreement, dated July 31, 2002, and referring expressly to royalties for 2001 retransmissions. *See* Ex. SDC 607.

The Judges **GRANT** the SDC request to disqualify any claims asserted by IPG on behalf of Salem Baptist Church, Inc., *except* claims to the 2001 satellite funds.

d. Paradigm Pictures

The SDC challenge IPG's claim for Paradigm Pictures for the year 2000 only. *See* SDC WRS at 13. The evidence is that Paradigm's President executed the Mandate Agreement in November 2001, four months after the deadline for filing 2000 claims. *See* Ex. SDC 608. This Mandate Agreement was not dated "as of" a valid date.

The Judges **GRANT** the SDC request to disqualify IPG's claims on behalf of Paradigm Pictures for the year 2000.

e. Billy Graham Evangelistic Association (BGEA)

The SDC object to IPG's representation of Billy Graham Evangelistic Association (BGEA) with respect to royalty years 2002 and 2003 because the IPG-BGEA Mandate Agreements relating to those years lack "mutuality" as IPG did not sign the copies of those agreements in evidence. *See* SDC WRS at 13-14; Ex. 609 (RESTRICTED). This objection is not well taken. Formation of a contract requires mutual intent and that intent can be ascertained by execution of a document or by partial performance. In this instance, BGEA signed an agreement to engage IPG's services and IPG performed according to the terms of the agreement, forming the requisite representation contract.⁴⁵

The Judges **DENY** the SDC's request to disqualify IPG's claims on behalf of BGEA to funds deposited for the royalty years 2002 and 2003.

f. Claims in Conflict with Claims filed by All Global Media

The verification and validation of claims is the first step in "Phase II" of the process of royalty distribution.⁴⁶ As noted above, to consider a claim, the Judges require that the copyright owner file a valid claim, either individually or jointly through an authorized representative, and file a Petition to Participate in the distribution proceeding at the appropriate time. Failure to complete either step invalidates the claim.

As the SDC point out, All Global Media filed joint claims on behalf of several entities for which IPG also filed joint claims.⁴⁷ *See* SDC WRS at 14; Ex. SDC610. Although included in an early Phase I Service List in related proceedings, All Global Media did not file a Petition to Participate in any phase of any proceeding covering any portion of the fund years at issue in this consolidated proceeding.⁴⁸ The duty of the Judges in this phase of the distribution process is to determine relative values of the programming for which competing claimants seek royalties.

Claims filed by All Global Media on behalf of copyright owners are, therefore, not eligible to participate in the valuation and distribution of royalty funds. To the extent IPG filed duplicate claims and included those claims on its Petitions to Participate in this and prior proceedings involving the funds at issue, IPG is eligible to administer the funds for those claimants. The relationship, if any, and disputes, if any, between IPG and All Global Media are not before the Judges. The SDC are not privy to an arrangement, if any, between IPG and All Global Media. The claimant copyright owners are entitled to royalties and the Judges have no evidence before them that IPG is not the proper party to pursue and administer those royalties.

⁴⁵ The Judges determine here only the *existence* of the contract. They do not interpret the terms of that contract.

⁴⁶ Allocation by category of claimants is accomplished in what has come to be called "Phase I" of a distribution proceeding.

⁴⁷ All Global Media filed joint claims for both satellite and cable funds each year between 2004 and 2009, inclusive.

⁴⁸ Prior to this Consolidated Phase II proceeding, the CRB initiated 11 separate Phase I proceedings covering the same time frame: Docket Numbers 2007-3 CRB CD (2004-05), 2008-4 CRB CD (2006), 2009-6 CRB CD (2007), 2010-6 CRB CD (2008), 2011-7 CRB CD (2009), 2008-5 CRB SD (1999-2000), 2005-2 CRB SD (2001-03), 2010-2 CRB SD (2004-07), and 2011-8 CRB SD (2009). All Global Media did not file a PTP or appear on a notice list for any of these proceedings.

The Judges **DENY** the SDC request to disqualify, on this basis, the cable or satellite claims asserted by IPG on behalf of Salem Baptist Church, Inc., Willie Wilson Productions, and Jack Van Impe Ministries for the years 2004 through 2009 or the cable or satellite claims of Creflo Dollar Ministries, Benny Hinn Ministries, and Eagle Mountain International Church, dba Kenneth Copeland Ministries for royalty year 2004.

g. Creflo Dollar Ministries, Benny Hinn Ministries, Eagle Mountain International Church

The SDC object on a separate basis to IPG's claims filed on behalf of Creflo Dollar Ministries, Benny Hinn Ministries, and Eagle Mountain International Church for any of the years at issue in this proceeding. *See* SDC WRS at 14-15; Ex. SDC625. The SDC assert that IPG withheld relevant discovery regarding its relationship with these entities and seek disallowance of the claims as a discovery sanction.⁴⁹ In the alternative, the SDC reprise the All Global Media argument, which the Judges have denied in this ruling.

Based on IPG's failure to produce evidence in discovery in this proceeding relating to claimants' attempted termination(s) of IPG's agency, the Judges **GRANT** the SDC's request on this basis to disallow the subject claims asserted for Creflo Dollar Ministries, Benny Hinn Ministries, and Eagle Mountain International Church dba Kenneth Copeland Ministries.

C. Failure to Establish Claimant's Ownership

The SDC object specifically to claims IPG filed on behalf of Adventist Media Center Productions and Eagle Mountain International Church. *See* SDC WRS at 16-17. The objections the SDC state in this proceeding are a reprise from the 1999 cable distribution proceeding. Neither the SDC nor IPG present any evidence in the present proceeding that changes the basis for the Judges' determination in the 1999 cable proceeding.

The Judges, therefore, incorporate by reference their analysis on these claims and **GRANT** the SDC request to disallow claims filed on behalf of Adventist Media [Center] Productions and **DENY** the SDC request to disallow on this ground claims on behalf of Eagle Mountain International Church dba Kenneth Copeland Ministries. *See June 18, 2014 Order* at 18-19.

D. Failure to Provide Full Legal Name

The SDC object to IPG's claims on behalf of Creflo Dollar Ministries and Benny Hinn Ministries on a third basis: failure to file the claim using the copyright owner's "full legal name." *See* SDC WRS at 19-22. Indeed, the Judges' regulations do require that a joint claimant provide a list that includes the "full legal name" of each copyright owner the claimant represents. *See* 37 C.F.R. §§ 360.3(b)(2)(i), 360.12(b)(2)(i). Regarding Creflo Dollar, the SDC offered

⁴⁹ Specifically, the SDC raise two discovery violations: (1) IPG failed to produce a copy of an email addressed to IPG, among others, directly addressing IPG's continuing relationship with each of the named entities, and (2) IPG produced only one agreement with Eagle Mountain International Church, when the SDC claim two existed. *See* SDC WRS, Ex. 11. This SDC exhibit is hearsay as to truth of the matter asserted therein relating to termination of the IPG relationship with the three entities, but the Judges need not rule on its admissibility for that purpose. The SDC offer the exhibit as support for discovery objections and the exhibit is admissible for those purposes.

evidence produced originally by IPG and offered by the SDC in the 1999 proceeding. *See* June 2014 Order at 15-16.

The phrase “full legal name” appears in the Judges’ regulations and in regulations issued by the Register of Copyrights, *e.g.*, the regulation describing copyright licensees’ Statements of Account. Copyright regulations do not define the phrase. Federal courts have rarely used the phrase, let alone defined it. The Seventh Circuit Court of Appeals resolved a dispute of this nature by referring to local Illinois law. *See Sullivan v. Plumbers Pension Fund*, 78 F.3d 322, 324 (7th Cir. 1996). In *Sullivan*, the dispute arose over imposing personal liability on a corporate officer because he abbreviated the corporate name on a contract that required the “Correct Legal Name.” The Seventh Circuit interpreted Illinois law as not requiring the “ridiculous formality” of stating the corporate name exactly as it appeared in incorporation documents on file with the Secretary of State. *Id.* at 326 (intent of parties governs as revealed by reference to corporate entity or corporate officer).

The SDC focus on claims filed from and after the 2001 change in claims filing regulations. In fact, regulations pre-dating the 2001 amendments required that a claimant seek funds by filing a claim using the “full legal name” of the party entitled to receive the royalties. When the Copyright Office addressed the issue of “placeholder” claims in 2001, it focused on the portion of the regulations that permitted “any party” to file a claim. To eliminate placeholders, the Copyright Office required identification of the copyright owner, whether on a single or a joint claim. At the time of the 2001 amendments, the Copyright Office noted that “the purpose of filing claims is to permit identification of all copyright owners who are entitled to a distribution.” *See* 66 *Fed. Reg.* 20961-62 (April 26, 2001). The IPG claims at issue in this proceeding are not “placeholder” claims.

The annual claim form meets the Judges’ regulatory requirement by providing a space for the “full legal name” of the copyright owner. For more recent claims, the form expressly provides, in italics to make it conspicuous: “*Do not include names of subsidiaries, parent companies, etc., if they are not a copyright owner entitled to royalties.*” The SDC contend that IPG’s listing of Benny Hinn Ministries and Creflo Dollar Ministries is a misidentification of the copyright owner.

As confirmed by the SDC, Creflo Dollar is a registered officer of any number of Georgia corporations, all apparently related to his ministries. *See* SDC SRS, Ex.17. The intertwined nature of the Dollar entities is borne out by the “organization chart” provided by the Dollar witness in the 1999 proceeding. *See* SDC WRS, Ex. 16; Ex. SDC616. Identifying the Creflo Dollar enterprises as “Creflo Dollar Ministries” is sufficient to express the parties’ intent and to give notice to other claimants of the identification of the entity claiming the royalties.

With regard to Benny Hinn Ministries, the SDCs’ investigation identifies that name as a registered fictitious name in Texas. *See* SDC WRS Ex. 18. Apparently, Benny Hinn Ministries is, and has been since at least November 2000, a name under which World Healing Center Church, Inc. conducts business. *See id.* According to the instructions on the Judges’ published claim forms, a joint claimant is not to list “subsidiaries...*etc., if they are not a copyright owner entitled to royalties.*” A doing-business-as fictitious name is neither a subsidiary nor a parent corporation; it is the same entity as the antecedent corporate owner of the fictitious name. Neither party has identified World Healing Center Church, Inc. as the copyright owner. The

identification of Benny Hinn Ministries, however, is sufficient to express the parties' intent and to give notice to other claimants.

For the foregoing reasons, the Judges **DENY** the SDC request on this ground to disqualify claims filed by IPG on behalf of Creflo Dollar Ministries and Benny Hinn Ministries, as those names on the respective claims were sufficient to identify the joint claimants.

E. Failure to Prove Devotional Character of Claimants' Programs

IPG has identified ten of its claimants, and approximately 105 of their program titles, in both the Devotional Programming and Program Suppliers category. IPG sought to represent each of these claimants solely in the Program Suppliers category in the 2000-03 cable distribution proceeding. The SDC challenge IPG's categorization as Devotional Programming of all programs that IPG has listed in both categories.

The operative category definitions for this Phase II proceeding are those used in making allocations in Phase I. *See 6/18/14 Ruling*, at 14. They are:

"Program Suppliers." Syndicated series, specials and movies, other than Devotional Claimants programs as defined below. Syndicated Series and specials are defined as including (1) programs licensed to and broadcast by at least one U.S. commercial television station during the calendar year in question, (2) programs produced by or for a broadcast station that are broadcast by two or more U.S. television stations during the calendar year in question, and (3) programs produced by or for a U.S. Commercial television station that are comprised predominantly of syndicated elements, such as music video shows, cartoon shows, "PM Magazine," and locally hosted movie shows.

"Devotional Claimants." Syndicated programs of a primarily religious theme, not limited to those produced by or for religious institutions.

Joint Motion of the Phase I Parties to Adopt Stipulation as to Claimant Group Categorization and Scope of Claims, Docket No. 2007-3 CRB CD 2004-2005, at 2, 8 (October 2, 2009) (citing Notice of Final Determination, 1984 Cable Royalty Distribution Proceeding, 52 Fed. Reg. 8408, 8316 (Mar. 17, 1987)).

As they relate to the present dispute, the definitions are so structured that any syndicated programming falls, by default, into the Program Suppliers category unless it fits within the definition of Devotional Claimants. Since IPG has previously categorized these claimants in the Program Suppliers' category, and is presently claiming in both categories, the burden is on IPG to demonstrate that these claims belong in the Devotional Claimants category. If it fails to do so, IPG must pursue the claims in the Program Suppliers' category.

In the present proceeding, the SDC made, and the Judges granted, a request for exemplars of programs attributable to a limited number of claimants that IPG listed in both the Devotional and Program Suppliers categories: IWV Media Group, Feed the Children⁵⁰, Willie Wilson Productions, and Envoy Productions. *See 7/30/14 Amended Joint Order on Discovery Motions*

⁵⁰ On the first day of the claims hearing, IPG withdrew any claim on behalf of *Feed the Children*. 12/8/14 Tr. at 20 (Counsel Boydston).

at 21-22. The SDC offer three bases for their objections: IPG (1) listed the disputed programs in both the Devotional and Program Suppliers categories, (2) failed to produce exemplars of the disputed programs or other identifying evidence to permit analysis of the program content for purposes of categorization of the claims, and (3) in some instances, listed multiple claimants to the same program.

The SDC presented Dr. William Brown as an expert witness in the 1998-99 cable distribution proceeding⁵¹ and designated his testimony in that proceeding as part of the record in the present proceeding.

Dr. Brown, a Professor and Research Fellow at the School of Communication and the Arts at Regent University, testified to three criteria to distinguish a “devotional” program:

First, the primary purpose of a religious television program is to focus the audience on their religious faith in God or some other form of deity, or an organized religion, or a religious leader.

Second, religious programs convey some kind of religious doctrine or coded set of religious beliefs.

Third, religious television programming provides some kind of perceived religious benefit to the viewing audience. This benefit could be in the form of spiritual encouragement, religious teaching, taking prayer requests by phone or mail, praying for the needs of viewers, or providing religious materials for further study, growth, or spiritual nourishment.

See Ruling and Order Regarding Claims and Separate Opinion, Docket No. 2008-1 CRB CD 98-99 (Phase II) (June 18, 2014) 15 (citing Written Testimony of Dr. William J. Brown, Ex. SDC-P-036, at 2-3 (internal citations omitted)). Dr. Brown’s criteria appear to be content driven and his first and third criteria, at least, turn on the subjective effect the program might have on its audience. Applying these criteria, the Judges disallowed compensation from the Devotional Programming category for IPG’s claim on behalf of “Feed the Children.”⁵²

In the present proceeding, MPAA presented Mr. Jeffrey Rovin as an expert in television history and genres who could utilize that expertise to express an expert opinion regarding whether the disputed IPG television programs met the definition for Devotional Programming. IPG did not proffer an expert witness to support its assertion that any of the disputed IPG programs fell within the category of Devotional Programming.

Mr. Rovin disagreed with the Brown criteria for determining the devotional or religious character of a program for purposes of categorization in this proceeding. Mr. Rovin described Dr. Brown’s criteria as “overbroad” and contended that “content alone is not sufficient in broad strokes to brand a show.” 12/8/14 Tr. at 96 (Rovin). With reference to Professor J. Machen, a Princeton Professor of New Testament during the 1920s, Mr. Rovin named three criteria for

⁵¹ Docket No. 2008-1 CRB CD 98-99 (Phase II).

⁵² In his Separate Opinion, Judge Strickler supported the Judges’ disqualification of the “Feed the Children” claim on other grounds, and opined that the Judges should, therefore, eschew what he deemed an inquiry regarding religious versus non-religious content that would have Constitutional overtones. *See id.* at 23-25.

identifying a devotional program that he asserted were more objective or “didactic.” *Id.* at 87. According to Mr. Rovin, for a program to be devotional or religious in theme, for purposes of royalty distribution from the Devotional Programming category, the program must be (1) homiletic, *i.e.*, a commentary on a scripture, (2) proselytic, *i.e.*, advocating a particular religious view, and (3) evangelistic, *i.e.*, promoting a particular deity. According to Mr. Rovin, a work cannot be categorized in the Devotional Programming category in this proceeding solely based on its content⁵³ or the reaction of its viewer.⁵⁴ Mr. Rovin contends that his criteria are strictly objective criteria. The fact that an individual viewer may bring personal “goodwill” to a presentation and may perceive subjectively a religious theme or message is insufficient to categorize the program as devotional for the purposes of royalty distributions.

Comparing Dr. Brown’s criteria with Mr. Rovin’s criteria, it is apparent the two experts diverge only with regard to whether ascertainment of a religious theme is subjective or objective. Dr. Brown’s focus on a particular deity seems to satisfy Mr. Rovin’s requirement for evangelism. Dr. Brown’s requirement that a program focus on some religious doctrine or set of religious beliefs might fit Mr. Rovin’s requirement of homiletic or proselytic content. Mr. Rovin’s criteria have no equivalent for the subjective element espoused by Dr. Brown, *viz.*, that the viewer perceive some religious benefit or spiritual nourishment. Thus, Mr. Rovin contends his more objective criteria are more appropriate for determining membership in the Devotional Programming category for royalty distribution.

For purposes of the analysis, MPAA provided Mr. Rovin with a list of 105 program titles from the IPG claimants’ catalogs. IPG “cross-claimed” the 105 titles in both the Program Suppliers and Devotional Programming categories. Mr. Rovin viewed program exemplars for eight programs.⁵⁵ He categorized only one of the eight programs as properly within the Devotional Programming category: “The City that Forgot Christmas.”⁵⁶ For the remaining programs, Mr. Rovin recommended disqualifying the claimants as Devotional Programming, as they failed his objective test. IPG presented no expert evidence to contradict Mr. Rovin’s opinion.

Mr. Rovin viewed but did not analyze the DVD IPG submitted as an exemplar for Willie Wilson Productions’ gospel music program *Singsation!*, as the subject DVD did not contain exemplars of the broadcast program; rather, the contents consisted of performances recorded on

⁵³ By way of example, Mr. Rovin mentioned a particular program featuring Jesus, Moses, Krishna, Buddha, Mohammed, and “John Smith,” which “certainly sounds religious.” 12/8/15 Tr. at 66 (Rovin). He revealed that the program he cited was, however, an episode of “South Park,” an animated program that is “decidedly not religious.” *Id.*

⁵⁴ As an example of a work that might be perceived by its viewer as containing “spirituality,” Mr. Rovin cited the film “It’s a Wonderful Life.” The story includes an angel earning his wings through good deeds. Regardless of that content, or the viewers’ subjective notions of the content, the film as a whole does not meet the three objective criteria that would include it in the Devotional Programming category. 12/8/15 Tr. at 81-82 (Rovin).

⁵⁵ IPG apparently produced 13 DVDs in response to MPAA discovery requests. Only eight of the DVDs contained programming identified by MPAA as at issue in the categorization quandary.

⁵⁶ See Rovin WRT at 10, 12; *but compare* 12/8/15 Tr. at 68 (subject program lacks devotional program criteria) *with id.* at 69 (subject program was “The one ...I felt was sufficiently devotional.”). Mr. Rovin apparently misspoke at first, but then conformed his oral testimony to this written testimony.

a DVD produced for sale. IPG did not introduce any expert or other witness to testify as to how a gospel music program satisfied the definition of Devotional Programming.

For the foregoing reasons, the Judges **GRANT** the SDC request to disallow as Devotional Programming the claims disqualified by Mr. Rovin and the claim on behalf of Willie Wilson Productions. IPG may seek royalties for these claimants in the Program Suppliers category.⁵⁷

F. Other Claims Objections

1. Great Plains National Instructional Library

IPG attempted to authenticate its claims on behalf of Great Plains National Instructional Library (GPNIL) by producing an Acknowledgement of Representation for cable and satellite royalties for the period 2000-09. An “Authorized Signatory” of Restructure Holdings LLC, signed the ratification and added a handwritten notation that GPNIL had been dissolved. *See* Ex. SDC622. The IPG ratification agreement offers no evidence to indicate that Restructure Holdings LLC is a *bona fide* successor in interest to GPNIL. IPG’s evidence, consisting of an email from an individual using a “gmail” account and claiming that GPNIL is “cka Restructure Holding,” is insufficient to establish the transfer of rights at issue in this proceeding. *See* Ex. IPG-P-066, Bates 1150.

Further, IPG identifies the program ascribed to GPNIL as “Home Sweet Home.” Without a more detailed description or an exemplar, IPG cannot sustain a claim on behalf of GPNIL. *See* Ex. SDC623. The evidence is clear that several programs might share a title but be of wholly different content and character. *See, e.g.,* section IV.A.7, *supra* (discussion regarding “Healthy Living” and “Jane Seymour’s Healthy Living”).

The Judges **GRANT** the SDC request to disallow any claim on behalf of GPNIL.

2. Joint Ownership Claims

IPG attributed 105 titles to ten different claimants, but IPG also “cross-claimed” licensors. *See* SDC WRS, Ex 24 (RESTRICTED), Ex. SDC624 (RESTRICTED). Not only has IPG failed to distinguish the fund category to compensate copyright owners for the programs,⁵⁸ IPG has failed to identify with clarity which fund year is at issue. IPG seeks to explain duplicate or triplicate claimants for a single title by asserting that they reflect claims for more than one royalty year. IPG has, metaphorically, tossed a hopelessly tangled skein of yarn in the midst of the Judges and participants and told them to make a sweater. In essence, as the SDC clearly assert, “[i]t is unreasonable for IPG to impose fundamental fact-checking responsibility on the other parties.” SDC WDS at 28.

Sixty-one of the cross-claimed titles were attributed to “Envoy Productions/Promark Television, Inc.” Exhibit IPG-P-066, at Bates 1180, establishes a relationship between Envoy, as

⁵⁷ The Judges have also determined that IPG, and not MPAA, may seek royalties for this claimant. *See supra*, section IV.A.4.b.

⁵⁸ With one apparent exception: IPG claims that “Something to Sing About” is compensable only from the Devotional Programming category. IPG nonetheless obfuscates the claimant and the claim year for this program.

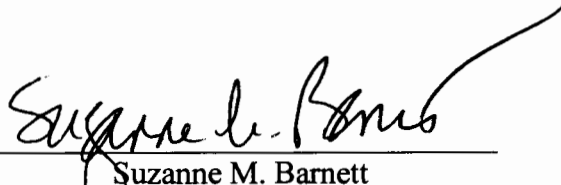
producer, and Promark, as syndicator/distributor. While this evidence is insufficient to determine which of the two parties might be entitled to the royalty distribution, it is sufficient to establish the claims as compensable, but only once per airing. IPG cannot collect royalties on behalf of *both* Envoy and Promark for any of these titles. With regard to the remaining cross-claimed titles, the Judges do not have sufficient evidence to establish which, if any, of the two or more additional claimants might be entitled to compensation, or for which years.

Program title alone is insufficient to identify the owner, rights holder, or nature of a broadcast. A program title attributed to more than one purported rights holder for more than one broadcast royalty year is of even less value in making a claim. Deeming it unreasonable and insufficient as evidence to establish any given claim in this group, the Judges **GRANT** the SDC's request to disqualify all IPG claims asserted for program titles that are ascribed to more than one copyright owner or claimant and for which the year of retransmission is unclear, *except* those titles attributed simultaneously to Envoy Productions and Promark Television, Inc. The parties shall take special care to assure that the allowed claims are not double-counted for any claimant or any claim year.

VII. Order

Based upon the foregoing analysis, the Judges hereby **ORDER** that the parties to this proceeding (1) realign their respective claims portfolios according to this Ruling, including the detail on "Exhibit A," (2) conform their Written Rebuttal Statements relating to final distribution to this Ruling, including the detail on "Exhibit A," and (3) inform the Judges immediately if they reach a settlement of the remaining distribution issues that would obviate further evidentiary hearing.

In accordance with the Judges' September 23, 2013, *Notice of Participants, Commencement of Voluntary Negotiation Period, and Case Scheduling Order*, the Judges will entertain no further claims challenges in this proceeding. Any claims challenges not previously raised by a participant are deemed waived.


Suzanne M. Barnett
Chief Copyright Royalty Judge

DATED: March 13, 2015.

JUDGES' RULINGS ON MPAA OBJECTIONS TO IPG CLAIMS*

| CLAIMANT | LICENSE | MPAA OBJECTION | IPG RESPONSE | JUDGES' RULING |
|---------------------|---------------|-------------------|---|---|
| Acme Communications | Cable Sat. | D(1) (03-09) | Acknowledgement exists. 102/3548 | Claim Allowed. IPG introduced Acknowledgement in evidence. |
| Adams Golf | Sat. | D(1) (03-09) | Agreement exists. 101/5158-60 Acknowledgement exists. 102/3549 | Claim Allowed. IPG introduced in evidence Agreement and Acknowledgment. |
| Adler Media, Inc. | Sat. | A(1) (2000) | Agreement exists. 101/3024-25 Acknowledgment exists. 102/3550 | Claim Dismissed. As held in 3/21/13 Order in 2000-03 proceeding, Claimant's 9/02 termination letter controls for "all <i>representation</i> and claims past and future." (Emphasis added.) |
| Adler Media, Inc. | Sat. | B (00-02) | Agreement exists. 101/3024-25 Acknowledgment exists. 102/3550 | Claim Dismissed. As held in 3/21/13 Order in 2000-03 proceeding, Claimant's 9/02 termination letter controls for "all <i>representation</i> and claims past and future." (Emphasis added.) |
| Adler Media, Inc. | Sat. | D(1) (02) | Acknowledgment exists. 102/3550 | Claim Dismissed. Once a termination has been deemed effective, an Acknowledgement cannot serve to reinstate the terminated Agreement. |

| CLAIMANT | LICENSE | MPAA OBJECTION | IPG RESPONSE | JUDGES' RULING |
|-------------------------------------|---------------|----------------------------|----------------------------------|--|
| Agency for Instructional Technology | Sat. | D(2) (2000) | Agreement exists. 101/3030-31 | Claim Allowed. Existence of Agreement renders absence of returned Acknowledgment irrelevant. Lack of Acknowledgment does not evidence termination of Agreement. |
| American Film Institute | Cable Sat. | D(2) (04-08) (00-08) | Agreement exists. 101/3032-36 | Claim Allowed. Existence of Agreement renders absence of returned Acknowledgment irrelevant. Lack of Acknowledgment does not evidence termination of Agreement. |
| Anheuser-Busch Companies, Inc. | Cable | D(2) | Agreement exists. 101/3037-40 | Claim Allowed. Existence of Agreement renders absence of returned Acknowledgment irrelevant. Lack of Acknowledgment does not evidence termination of Agreement. |
| Ardent Productions | Cable | D(2) | Agreement exists. 101/3041-43 | Objection Overruled. Claim cannot be dismissed on this basis. Existence of Agreement renders absence of returned Acknowledgment irrelevant. Lack of Acknowledgment does not evidence termination of Agreement. |
| Ardent Productions | Cable | F | Catalogue research. 105/3963 | Claim Dismissed. Insufficient evidence that Claimant verified the titles or that IPG confirmed Claimant owned or controlled the copyright or verified the title. Third-party evidence not probative of such authority. |

| CLAIMANT | LICENSE | MPAA OBJECTION | IPG RESPONSE | JUDGES' RULING |
|------------------------|---------------|----------------------------|---|---|
| Ardent Productions | Sat. | D(2) | Agreement exists. 101/3041-43 | Claim cannot be dismissed on this basis. Existence of Agreement renders absence of returned Acknowledgment irrelevant. Lack of Acknowledgment does not evidence termination of Agreement. |
| Ardent Productions | Sat. | F | Catalogue research. 105/3963 | Claim Dismissed. Insufficient evidence to show claimant owned copyright or was entitled to collect royalties |
| Atlantic Film Partners | Cable | D(2) | Agreement exists, with Extension Letter (via Beckmann Int'l). 101/3057-59 Acknowledgement exists. 102/3552 | Claim Allowed. Existence of Agreement and Acknowledgment preclude dismissal of the Claim. Extension Letter probative of agreement when referenced Agreement in evidence. |
| Aviva International | Cable Sat. | D(2) (04-09) (00-09) | Agreement exists. 101/3230-34. Acknowledgement exists. 102/3582. | Claim Allowed, except as noted below regarding Objection D(2). Existence of Agreement and Acknowledgment preclude dismissal of the Claim. 101/3233 evidences that Aviva is a wholly-owned subsidiary of the signatory Claimant (Image Entertainment). |

| CLAIMANT | LICENSE | MPAA OBJECTION | IPG RESPONSE | JUDGES' RULING |
|-----------------------------------|-------------------|--|---|--|
| Aviva International | Cable Sat. | A(1) (04-06) A(1) (00-06) | Agreement exists. 101/3230-34. Acknowledgement exists. 102/3582. | Claim Dismissed for the noted years. The evidence that Aviva was a subsidiary of Image Entertainment (101/3233) was dated 2007, not 2001. <i>See</i> 308, ex. 13 therein. |
| BBC Worldwide Americas (BBC WA) | Cable Sat. | B (2008) A(2) (00-08) B (06-08) | Agreement existed. 101/3047-49 Acknowledgment existed. 102/3551 | Acknowledgment signed in error according to Claimant. 325. Claimant entered into new agreement with MPAA covering Cable and Satellite, but confirmed IPG representation for certain prior years. <i>Id.</i> Pursuant to this new agreement: IPG Cable Claim Dismissed for programs retransmitted as of 7/1/08. IPG Cable Claim Allowed for programs retransmitted from 1/08 through 6/30/08. IPG Satellite Claim Dismissed for the 2006-2008 Satellite royalty years. IPG Satellite Claim Allowed for the 2005 Satellite royalty year. |
| BBC Worldwide/TEAM Communications | Cable | A(2) C D(1) | None. | Claim Dismissed in 00-03 Determination. No new evidence of IPG representation of Claimant in this proceeding. |

| CLAIMANT | LICENSE | MPAA OBJECTION | IPG RESPONSE | JUDGES' RULING |
|----------------------------------|------------|-------------------|----------------------------------|---|
| Beacon Communications Corp. | Sat. | B (00-03) | Agreement exists. 1013050-56 | Claim Dismissed. Claimant terminated IPG representation. 308 |
| Beacon Communications Corp. | Sat. | D(2) | Agreement exists. 1013050-56 | Claim cannot be dismissed on this basis. Existence of Agreement renders absence of returned Acknowledgment irrelevant. Lack of Acknowledgment does not evidence termination of Agreement. |
| Best Direct (International) Ltd. | Sat. | D(2) (01) | Agreement exists. 101/3060-61 | Claim Allowed. Existence of Agreement renders absence of returned Acknowledgment irrelevant. Lack of Acknowledgment does not evidence termination of Agreement. |
| Beyond International, Ltd. | Sat. | B (2000) | Agreement exists. 101/3062-64 | Claim Dismissed. Claimant terminated IPG representation. 326 |
| Beyond International, Ltd. | Sat. | D(2) (2000) | Agreement exists. 101/3062-64 | Claim cannot be dismissed on this basis. Existence of Agreement renders absence of returned Acknowledgment irrelevant. Lack of Acknowledgment does not evidence termination of Agreement. |
| Big Events Co. | Cable Sat. | C | Agreement exists. 106/5161-63 | Objection Overruled. Claim cannot be dismissed for failure to provide evidence of Agreement because Agreement in evidence. |

| CLAIMANT | LICENSE | MPAA OBJECTION | IPG RESPONSE | JUDGES' RULING |
|-----------------|---------------|-------------------|-----------------------------------|--|
| Big Events Co. | Cable Sat. | D(2) | Agreement exists. 101/5161-63 | Objection Overruled. Claim cannot be dismissed on this basis. Existence of Agreement renders absence of returned Acknowledgment irrelevant. Lack of Acknowledgment does not evidence termination of Agreement. |
| Big Events Co. | Cable Sat. | F | No documentation. | Claim Dismissed. No evidence claimant verified the titles or that IPG confirmed Claimant owned or controlled the work, owned copyright or verified the title. |
| Big Feats Int'l | Cable Sat. | B | Agreement existed. 101/5164-65 | Claim Dismissed. Executed Termination Letter not rebutted by subsequent evidence. 107/5131. |
| Big Feats Int'l | Cable Sat. | C | Agreement existed. 101/5164-65 | Claim cannot be dismissed on this basis. Evidence of agreement exists. |
| Big Feats Int'l | Cable Sat. | D(2) | Agreement existed. 101/5164-65 | Claim cannot be dismissed on this basis. Existence of Agreement renders absence of returned Acknowledgment irrelevant. Lack of Acknowledgment does not evidence termination of Agreement. |

| CLAIMANT | LICENSE | MPAA OBJECTION | IPG RESPONSE | JUDGES' RULING |
|-------------------------------------|---------------|-------------------|---|--|
| Bloomberg Television | Sat. | D(2) (2000) | Agreement exists. 101/3068-70 | Claim Allowed. Existence of Agreement renders absence of returned Acknowledgment irrelevant. Lack of Acknowledgment does not evidence termination of Agreement |
| C/F Int'l | Cable Sat. | D(2) | Agreement exists. 101/3077-09 | Claim Allowed. Existence of Agreement precludes dismissal of Claim. |
| Cappy Productions | Cable Sat. | D(1) | Agreement exists. 101/5166-68. Acknowledgement exists. 102/3558 | Claim Allowed. IPG introduced in evidence Agreement and Acknowledgment. |
| Carol Reynolds Productions, Inc. | Cable Sat. | A(2) | Agreement existed. 101/3085-86 | Claim Dismissed. IPG introduced no evidence to contradict finding in 2000-03 Determination that MPAA had subsequent contract with Claimant that superseded IPG contract. |
| Carol Reynolds Productions, Inc. | Cable Sat. | D(2) | Agreement existed. 101/3085-86 | Claim cannot be dismissed on this basis. Existence of Agreement renders absence of returned Acknowledgment irrelevant. Lack of Acknowledgment does not evidence termination of Agreement |
| Carol Reynolds Productions. Inc. | Sat. | E (2000) | None. | Claim Dismissed for 2000 on this basis as well. No evidence that Claim was filed. |

| CLAIMANT | LICENSE | MPAA OBJECTION | IPG RESPONSE | JUDGES' RULING |
|--------------------------------------|------------|-------------------|---------------------------------|---|
| Central City Productions Inc. | Cable Sat. | D(2) | Agreement existed. 101/3090-95 | Claim Allowed. Existence of Agreement renders absence of returned Acknowledgment irrelevant. Lack of Acknowledgment does not evidence termination of Agreement. |
| Cheaters Int'l. | Cable Sat. | D(2) (01-09) | Agreement exists. 101/3096-98 | Claim Allowed. Existence of Agreement renders absence of returned Acknowledgment irrelevant. Lack of Acknowledgment does not evidence termination of Agreement. |
| Chesler Perlmutter Productions, Inc. | Cable Sat. | D(2) | Agreement exists. 101/3099-3105 | Claim Allowed. Existence of Agreement renders absence of returned Acknowledgment irrelevant. Lack of Acknowledgment does not evidence termination of Agreement. |
| Cinemavault Releasing, Inc. | Cable Sat | A(2) (01-09) | Agreement exists. 101/3109-10 | Claim Allowed. IPG has introduced an Agreement in evidence. |
| Cinemavault Releasing, Inc. | Cable Sat. | C (01-09) | Agreement exists. 101/3109-10 | Claim Allowed. Unlike in 2000-03 proceeding, IPG has introduced an Agreement in evidence. |
| Cinemavault Releasing, Inc. | Cable Sat | D(2) (01-09) | Agreement exists. 101/3109-10 | Claim Allowed. Existence of Agreement renders absence of returned Acknowledgment irrelevant. Lack of Acknowledgment does not evidence termination of Agreement. |

| CLAIMANT | LICENSE | MPAA OBJECTION | IPG RESPONSE | JUDGES' RULING |
|-----------------------------------|-------------------|--|--|---|
| Cirque de Soleil Images, Inc. | Cable Sat. | D(2) D(2) (all years) E (01 only) | Agreement exists. 101/3111-12 No response regarding E as to 2001 | Claim Allowed (except as noted below). Existence of Agreement renders absence of returned Acknowledgment irrelevant. Lack of Acknowledgment does not evidence termination of Agreement. However, Satellite Claim Dismissed for 2001 because no claim filed. |
| Cogeco Radio- Television | Cable Sat. | D(2) D(2) A(1) and E (00 only) | Agreement exists. 101/3113 None. | Claim Allowed. Existence of Agreement renders absence of returned Acknowledgment irrelevant. Lack of Acknowledgment does not evidence termination of Agreement. 2000 Satellite Claim Dismissed. No new evidence to contradict conclusion in March 21, 2013 Order in 2000-03 proceeding. |
| Computer Personalities Systems | Cable Sat. | D(2) | Agreement exists. 101/3114-20 | Claim Allowed. Existence of Agreement renders absence of returned Acknowledgment irrelevant. Lack of Acknowledgment does not evidence termination of Agreement. |
| Daniel Hernandez Productions | Cable Sat. | D(2) | Agreement exists. 101/3131-35 | Objection Overruled. Existence of Agreement renders absence of returned Acknowledgment irrelevant. Lack of Acknowledgment does not evidence termination of Agreement. |

| CLAIMANT | LICENSE | MPAA OBJECTION | IPG RESPONSE | JUDGES' RULING |
|-------------------------------|------------|-------------------|--------------------------------|--|
| Devillier Donegan Productions | Cable Sat. | B | Agreement existed. 101/3142-44 | Claim Dismissed. Claimant submitted affidavit disavowing and/or terminating IPG. 327 |
| Devillier Donegan Productions | Cable Sat. | D(2) | Agreement existed. 101/3142-44 | Absence of Acknowledgement probative of ongoing effect of Claimant's termination of IPG. |
| Devillier Donegan Productions | Sat. | E (00) | None. | Claim Dismissed for 2000 on this basis as well. No claim filed. |
| Direct Cinema Ltd. | Cable Sat. | C | Agreement exists. 101/5169 | Claim Dismissed. IPG's evidence is an unacceptable letter of extension, not the underlying agreement. |
| Direct Cinema Ltd | Cable Sat. | D(2) | Agreement exists. 101/5169 | Claim Dismissed on this basis as well. Absence of returned Acknowledgment implies the lack of a contractual relationship with the Claimant, <i>in the absence of other sufficient evidence of the prior agreement.</i> |
| Distraction Formats | Cable Sat. | D(2) | Agreement exists. 101/3145-47 | Objection Overruled. Claim cannot be dismissed on this basis. Existence of Agreement renders absence of returned Acknowledgment irrelevant. Lack of Acknowledgment does not evidence termination of Agreement. |

| CLAIMANT | LICENSE | MPAA OBJECTION | IPG RESPONSE | JUDGES' RULING |
|---------------------|---------------|--|--|--|
| Distraction Formats | Cable Sat. | F | IPG catalogue research. 105/4033 | Claim Dismissed. Insufficient evidence that Claimant owned titles or was authorized to collect royalties. |
| Envoy Productions | Sat. | A(1) (01) | Agreement exists. 101/3158 | Claim Dismissed. Agreement with claimant covers only 2000 (portion of IPG exhibit (69) intended to prove extension to 2001 (§ 4) refused and not in evidence). |
| Envoy Productions | Sat. | D(1) (01) | Acknowledgement exists. 102/3567 | Claim Dismissed on this basis as well. Acknowledgement covers only 2000 (portion of IPG exhibit (69) intended to prove extension to 2001 (§ 4) refused and not in evidence). |
| Feed the Children | Cable | B* 307 (*not raised in MPAA WRS (Claims) because notice of termination signed on 11/24/14) | Agreement exists. 101/3162-65 | Claim dismissed. IPG relationship terminated according to Claimant's Notice and accompanying Declaration. 307. |
| Films by Jove, Inc. | Cable Sat. | D(1) | Agreement exists. 101/5170-71. Acknowledgement exists. 102/3571 | Claim Allowed. IPG produced Agreement and Acknowledgment. |

| CLAIMANT | LICENSE | MPAA OBJECTION | IPG RESPONSE | JUDGES' RULING |
|------------------------|---------------|-------------------|--|--|
| Firing Line | Cable Sat. | D(1) | Agreement exists. 101/5172-73. Acknowledgement exists. 102/3572 | Claim Allowed. IPG introduced in evidence Agreement and Acknowledgment. |
| Firing Line | Cable Sat. | F | Correspondence from Claimant identifying titles. 108/5241-42 | Claim Dismissed. 108/5241-42 does not identify any titles |
| Firing Line | Sat. | E (00) | None. | Satellite Claim Dismissed for 2000 on this additional basis. No evidence that claim was filed for 2000. |
| Fishing University LLC | Cable Sat. | D(2) | Agreement exists. 101/3169-73 | Claim Allowed. Existence of Agreement renders absence of returned Acknowledgment irrelevant. Lack of Acknowledgment does not evidence termination of Agreement. |
| Fitness Quest, Inc. | Sat. | A(2) (01) | Agreement exists. 101/3174-76 | Claim cannot be dismissed on this basis. IPG has introduced an Agreement in evidence. |
| Fitness Quest, Inc. | Sat. | D(2) (01) | Agreement exists. 101/3174-76 | Claim cannot be dismissed on this basis. Existence of Agreement renders absence of returned Acknowledgment irrelevant. Lack of Acknowledgment does not evidence termination of Agreement. |

| CLAIMANT | LICENSE | MPAA OBJECTION | IPG RESPONSE | JUDGES' RULING |
|-----------------------------------|---------------|-------------------|--|---|
| Fitness Quest, Inc. | Sat. | F | Correspondence with Claimant re titles. 106/4458 Catalogue research. 105/4055 | Claim Dismissed. 10/4458 is <i>not</i> correspondence with Claimant, but rather another copy of 105/4055, which is insufficient evidence to show claimant owned copyright or was entitled to collect royalties. |
| Florentine Films/Hott Productions | Cable Sat. | D(1) (01-09) | Agreement exists. 101/5174-75. Acknowledgement exists. 102/3575 | Claim Allowed. IPG introduced in evidence Agreement and Acknowledgment. |
| Funimation Productions | Cable Sat. | D(2) | Contract exists. 101/3183-88 | Claim Allowed. Existence of Agreement renders absence of returned Acknowledgment irrelevant. Lack of Acknowledgment does not evidence termination of Agreement. |
| Global Response | Cable | E (06) | None. | Claim Dismissed. <i>See</i> 302 (2006 IPG Joint Claim for Cable does not include Global Response) |
| Golden Films Finance Corp. | Cable Sat. | B B (04-09) | Agreement existed. 101/3200-03 Acknowledgement existed. 102/3578-79 | Claim Dismissed. IPG relationship terminated according to Claimant's affidavit. 328 |
| Gorky Studios | Cable Sat. | C | Agreement exists. 101/3266-74 | Claim Allowed. IPG has introduced an Agreement in evidence. |

| CLAIMANT | LICENSE | MPAA OBJECTION | IPG RESPONSE | JUDGES' RULING |
|--|---------------|-------------------|--|---|
| Gorky Studios | Cable Sat. | D(2) | Agreement exists. 101/3266-74 | Claim Allowed. Existence of Agreement renders absence of returned Acknowledgment irrelevant. Lack of Acknowledgment does not evidence termination of Agreement. |
| Gorky Studios | Cable Sat. | F | Represented programs identified within contracting documents. 122/3717-22 | Claim Allowed. IPG submitted sufficient evidence of verification of titles. |
| Granada Media | Sat. | D(2) (2000) | Agreement exists. 101/3204-06 | Claim Allowed. Existence of Agreement renders absence of returned Acknowledgment irrelevant. Lack of Acknowledgment does not evidence termination of Agreement. |
| Grandolph Juravic Entertainment | Cable Sat. | D(2) | Agreement exists. 101/3207-10 | Claim Allowed. Existence of Agreement renders absence of returned Acknowledgment irrelevant. Lack of Acknowledgment does not evidence termination of Agreement. |
| Great Plains National Instructional Library (cka Restructure Holding) | Sat. | E (2000) | None. | Claim Dismissed. No claim for this claimant in IPG satellite claims filing for 2000. 302 |
| Greenlight Entertainment | Cable Sat. | C | Agreement exists. 101/5176-77 | Objection Overruled. Claim cannot be dismissed on this basis. IPG has introduced an Agreement in evidence. |

| CLAIMANT | LICENSE | MPAA OBJECTION | IPG RESPONSE | JUDGES' RULING |
|--------------------------|------------|-------------------|--|--|
| Greenlight Entertainment | Cable Sat. | D(2) | Agreement exists. 101/5176-77 | Objection Overruled. Claim cannot be dismissed on this basis. Existence of Agreement renders absence of returned Acknowledgment irrelevant. Lack of Acknowledgment does not evidence termination of Agreement. |
| Greenlight Entertainment | Cable Sat. | F | None. | Claim Dismissed. No evidence Claimant owned copyright and was authorized to collect royalties |
| GTSP Records | Cable Sat | D(2) | Agreement exists. 101/3217-18 | Claim Allowed (except as noted below). Existence of Agreement renders absence of returned Acknowledgment irrelevant. Lack of Acknowledgment does not evidence termination of Agreement. |
| GTSP Records | Sat. | E (08) | Alleged copying error by CRB according to testimony of Raul Galaz. | Claim Dismissed for Satellite year 2008. IPG failed to file Claim. |
| HLB Productions | Cable Sat. | D(2) | Agreement exists. 101/3222-25 | Claim Allowed (except as noted below). Existence of Agreement renders absence of returned Acknowledgment irrelevant. Lack of Acknowledgment does not evidence termination of Agreement. |
| HLB Productions | Sat. | E (08) | Alleged copying error by CRB according to testimony of Raul Galaz. | Claim Dismissed for Satellite year 2008. IPG failed to file Claim. |

| CLAIMANT | LICENSE | MPAA OBJECTION | IPG RESPONSE | JUDGES' RULING |
|----------------------------|---------------|-------------------|--|---|
| Home Enterprises | Cable | D(2) | Agreement exists. 101/3226-29 | Claim Allowed (except as noted below). Existence of Agreement renders absence of returned Acknowledgment irrelevant. Lack of Acknowledgment does not evidence termination of Agreement. |
| Home Enterprises | Sat. | E (08) | Alleged copying error by CRB according to testimony of Raul Galaz. | Claim Dismissed for Satellite year 2008. IPG failed to file Claim. |
| InCA Productions | Cable Sat. | D(1) | Agreement exists. 101/3057-59 Acknowledgement exists. 102/3552; 3583. | Claim Allowed (except as noted below). IPG introduced evidence of Agreement and Acknowledgement. |
| InCA Productions | Sat. | A(1) (00) | Acknowledgement covers 2000. | Claim Allowed for Satellite Year 2000. Acknowledgement distinguished facts from those in 2000-03 proceeding. |
| InCA Productions | Sat. | E (08) | Alleged copying error by CRB according to testimony of Raul Galaz. | Claim Dismissed for Satellite year 2008. IPG failed to file Claim. |
| Integrity Global Marketing | Cable Sat. | A(2) | Agreement exists. 101/3236-39 | Claim Allowed. IPG has introduced an Agreement in evidence. |
| Integrity Global Marketing | Cable Sat. | D(2) | Agreement exists. 101/3236-39 | Claim allowed (except as noted below) Existence of Agreement renders absence of returned Acknowledgment irrelevant. Lack of Acknowledgment does not evidence termination of Agreement. |

| CLAIMANT | LICENSE | MPAA OBJECTION | IPG RESPONSE | JUDGES' RULING |
|----------------------------|---------------|-------------------|---|--|
| Integrity Global Marketing | Sat. | E (08) | Alleged copying error by CRB according to testimony of Raul Galaz. | Claim Dismissed for Satellite year 2008. IPG failed to file Claim. |
| IWV Media Group, Inc. | Cable Sat. | A(1) (02-09) | Representation Agreement with another entity (Millen) containing Raul Galaz's handwritten 2012 reference to IWV; backdated more than a decade. 101/3219-21 | Claim cannot be allowed on this basis. As in March 21 Order in 2000-03 proceeding, agreements with entity other than claimant, standing alone, are insufficient. |
| IWV Media Group, Inc. | Cable Sat. | D(1) (02-09) | Acknowledgement exists specifically identifying IWV as Claimant. 102/3584 | Claim Allowed (except as noted below). IPG introduced evidence of sufficient Acknowledgement. |
| IWV Media Group, Inc. | Sat. | E (08) | Alleged copying error by CRB according to testimony of Raul Galaz. | Claim Dismissed for Satellite year 2008. IPG failed to file Claim. |
| JCS Entertainment II | Cable | D(1) | Agreement exists. 101/5178-81 | Claim Allowed (except as noted below). IPG has introduced an Agreement in evidence. |
| JCS Entertainment II | Sat. (08) | E | Alleged copying error by CRB according to testimony of Raul Galaz. | Claim Dismissed for Satellite year 2008. IPG failed to file Claim. |
| Kid Friendly Productions | Cable Sat. | A(1) | Agreement exists (but excluding U.S. rights). 101/3244-47 | Claim cannot be allowed on this basis. No authority to file claims in U.S. As in March 21, 2013 Order in 2000-03 proceeding, absence of such authority precludes claims. |

| CLAIMANT | LICENSE | MPAA OBJECTION | IPG RESPONSE | JUDGES' RULING |
|---------------------------|------------|-------------------|--|---|
| Kid Friendly Productions | Cable Sat. | D(1) | Acknowledgement exists (acknowledging U.S. rights). 102/3587 | Claim Allowed (except as noted below). IPG introduced in evidence an Acknowledgment that an agreement covered U.S. rights. |
| Kid Friendly Productions | Sat. | E (08) | Alleged copying error by CRB according to testimony of Raul Galaz. | Claim Dismissed for Satellite year 2008. IPG failed to file Claim. |
| King Motion Picture Corp. | Cable Sat. | D(2) (01-09) | No acknowledgement letter. Only Extension Letter 102/3247 | Claim Dismissed. As held in the March 21, 2013 Order in the 2000-03 Proceeding: "Extension agreements alone, without the underlying agreement, cannot establish the validity of the original representation." |
| King Motion Picture Corp. | Sat. | E (08) | Alleged copying error by CRB according to testimony of Raul Galaz. | Claim Dismissed for Satellite year 2008 on this basis as well. IPG failed to file Claim. |
| Knight Enterprises | Cable Sat. | D(2) | Agreement exists. 101/3248 | Claim Allowed (except as noted below). Existence of Agreement renders absence of returned Acknowledgment irrelevant. Lack of Acknowledgment does not evidence termination of Agreement. |
| Knight Enterprises | Sat. | E (08) | Alleged copying error by CRB according to testimony of Raul Galaz. | Claim Dismissed for Satellite year 2008. IPG failed to file Claim. |

| CLAIMANT | LICENSE | MPAA OBJECTION | IPG RESPONSE | JUDGES' RULING |
|---|---------------|-------------------|--|---|
| Les Distributions Rozon, Inc./Just for Laughs | Cable Sat. | D(2) (01-09) | Agreement exists. 101/3252-54 | Claim cannot be dismissed on this basis. Existence of Agreement renders absence of returned Acknowledgment irrelevant. Lack of Acknowledgment does not evidence termination of Agreement. |
| Les Distributions Rozon, Inc./Just for Laughs | Cable Sat. | F (01-09) | None. | Claim Dismissed. No evidence claimant owned copyright or was authorized to collect royalties. |
| Les Distributions Rozon, Inc./Just for Laughs | Sat. | E (08) | Alleged copying error by CRB according to testimony of Raul Galaz. | Claim Dismissed for Satellite year 2008 on this basis as well. IPG failed to file Claim. |
| Les Productions Videofilms Limitee | Cable Sat. | C (01-09) | Agreement exists. 101/5182 | Claim Dismissed. No evidence of IPG's engagement (for years other than 2000). |
| Les Productions Videofilms Limitee | Cable | D(2) | Agreement exists (for 2000 only). 101/5182 | Claim cannot be dismissed on this basis. Existence of Agreement renders absence of returned Acknowledgment irrelevant. Lack of Acknowledgment does not evidence termination of Agreement. |
| Les Productions Videofilms Limitee | Cable Sat. | F | IPG catalogue research. 105/4063 | Claim Dismissed (for all years including 2000). Insufficient evidence to show claimant owned copyright or was authorized to collect royalties. |

| CLAIMANT | LICENSE | MPAA OBJECTION | IPG RESPONSE | JUDGES' RULING |
|------------------------------------|------------|-------------------|--|---|
| Les Productions Videofilms Limitee | Sat. | E (08) | Alleged copying error by CRB according to testimony of Raul Galaz. | Claim Dismissed for Satellite year 2008 on this basis as well. IPG failed to file Claim. |
| Link Television Entertainment | Cable Sat. | D(2) | Agreement exists. 101/3259-60 | Claim Allowed (except as noted below). Existence of Agreement renders absence of returned Acknowledgment irrelevant. Lack of Acknowledgment does not evidence termination of Agreement. |
| Link Television Entertainment | Sat. | E (08) | Alleged copying error by CRB according to testimony of Raul Galaz. | Claim Dismissed for Satellite year 2008. IPG failed to file Claim. |
| Lipscomb Entertainment | Cable Sat. | C | Contract exists (but between claimant and Music and Media Int'l, not with IPG or WSG (but notices go to WSG pursuant to Contract)). 101/5183-86 | Claim Dismissed. Contract does not identify IPG as the Claimant's representative. |
| Lipscomb Entertainment | Cable Sat. | D(2) | Agreement exists (but between claimant and Music and Media Int'l, not with IPG or WSG (but notices go to WSG pursuant to Contract)). 101/5183-86 | Claim cannot be dismissed on this basis. Failure of IPG to offer Acknowledgement from Claimant indicating that IPG was the Claimant's representative is consistent with the fact that IPG is not identified as a party to the Agreement |
| Lipscomb Entertainment | Sat. | E (08) | Alleged copying error by CRB according to testimony of Raul Galaz. | Claim Dismissed for satellite year 2008 on this basis as well. IPG failed to file Claim. |

| CLAIMANT | LICENSE | MPAA OBJECTION | IPG RESPONSE | JUDGES' RULING |
|------------------------------|---------------|-------------------|--|---|
| Magus Entertainment | Cable Sat. | D(2) | Agreement exists. 101/3266-74 | Claim Allowed (except as noted below). Existence of Agreement renders absence of returned Acknowledgment irrelevant. Lack of Acknowledgment does not evidence termination of Agreement. |
| Magus Entertainment | Sat. | E (08) | Alleged copying error by CRB according to testimony of Raul Galaz. | Claim Dismissed for satellite year 2008. IPG failed to file Claim. |
| Mansfield Television | Sat. | E (08) | Alleged copying error by CRB according to testimony of Raul Galaz. | Claim Dismissed for Satellite year 2008. IPG failed to file Claim. |
| Mark Anthony Entertainment | Sat. | E (08) | Alleged copying error by CRB according to testimony of Raul Galaz. | Claim Dismissed for Satellite year 2008. IPG failed to file Claim. |
| MBC Teleproductions | Sat. | D(1) (2000) | Agreement exists. 101/3280-85 Acknowledgement exists. 102/3590, 3594 | Claim Allowed. IPG introduced evidence of Agreement and Acknowledgement. |
| Mentorn Barraclough Carey | Cable | D(2) | Agreement exists. 101/3299-3301 | Claim cannot be dismissed on this basis. Existence of Agreement renders absence of returned Acknowledgment irrelevant. Lack of Acknowledgment does not evidence termination of Agreement. |
| Mentorn Barraclough Carey | Cable Sat. | F | Catalogue searches. 101/4067-4068 | Claim Dismissed. Insufficient evidence to show claimant owned copyright or was entitled to collect royalties |

| CLAIMANT | LICENSE | MPAA OBJECTION | IPG RESPONSE | JUDGES' RULING |
|--|---------------|-------------------|---|--|
| Mentorn Barraclough Carey | Sat. | E (08) | Alleged copying error by CRB according to testimony of Raul Galaz. | Claim Dismissed for satellite year 2008 on this basis as well. IPG failed to file Claim. |
| Meredith Corporation | Cable Sat. | D(2) | Agreement exists. 101/3302-04 | Claim Allowed (except as noted below). Existence of Agreement renders absence of returned Acknowledgment irrelevant. Lack of Acknowledgment does not evidence termination of Agreement. |
| Meredith Corporation | Sat. | E (08) | Alleged copying error by CRB according to testimony of Raul Galaz. | Claim Dismissed for satellite year 2008. IPG failed to file Claim. |
| Midwest Center for Stress & Anxiety | Sat. | E (08) | Alleged copying error by CRB according to testimony of Raul Galaz. | Claim Dismissed for Satellite year 2008. IPG failed to file Claim. |
| MoneyTV.net, Inc. | Cable Sat | D(1) (03-09) | Acknowledgement exists. 102/3596 | Claim Allowed (except as noted below). IPG introduced Acknowledgement into evidence, demonstrating that Claimant had ratified IPG's authority to collect royalties on its behalf. |
| MoneyTV.net, Inc. | Sat. | E (08) | Alleged copying error by CRB according to testimony of Raul Galaz. | Claim Dismissed for satellite year 2008. IPG failed to file Claim. |

| CLAIMANT | LICENSE | MPAA OBJECTION | IPG RESPONSE | JUDGES' RULING |
|--|------------|-------------------|--|---|
| Multimedia Group of Canada | Cable Sat. | D(2) | Agreement exists. 101/3311-12 | Claim cannot be dismissed on this basis. Existence of Agreement renders absence of returned Acknowledgment irrelevant. Lack of Acknowledgment does not evidence termination of Agreement. |
| Multimedia Group of Canada | Cable Sat. | F | Catalogue searches. 105/4071 | Claim Dismissed. Insufficient evidence to show claimant owned copyright or was entitled to collect royalties |
| Mustang Marketing | Sat. | D(2) (2000) | Agreement exists. 101/3313-14 | Claim Allowed. Existence of Agreement renders absence of returned Acknowledgment irrelevant. Lack of Acknowledgment does not evidence termination of Agreement. |
| National Academy of Television Arts & Sciences | Sat. | E (08) | Alleged copying error by CRB according to testimony of Raul Galaz. | Claim Dismissed for Satellite year 2008. IPG failed to file Claim. |
| Nelson Davis Television Productions | Cable Sat. | D(2) (03-09) | Agreement exists. 101/3318-20 | Claim cannot be dismissed on this basis. Existence of Agreement renders absence of returned Acknowledgment irrelevant. Lack of Acknowledgment does not evidence termination of Agreement. |
| Nelson Davis Television Productions | Cable Sat. | F (03-09) | None. | Claim Dismissed. No evidence to show claimant owned copyright or was entitled to collect royalties. |

| CLAIMANT | LICENSE | MPAA OBJECTION | IPG RESPONSE | JUDGES' RULING |
|--|---------------|-------------------|--|---|
| Nelson Davis Television Productions | Sat. | E (08) | Alleged copying error by CRB according to testimony of Raul Galaz. | Claim Dismissed for Satellite year 2008 on this basis as well. IPG failed to file Claim. |
| Network Programs International | Cable Sat. | D(1) (08) | Agreement exists. 101/5187-89 Acknowledgement exists. 102/3598 | Objection overruled. IPG introduced evidence of Agreement and Acknowledgement. |
| Network Programs International | Sat. (08) | E | Alleged copying error by CRB according to testimony of Raul Galaz. | Claim Dismissed for satellite year 2008. IPG failed to file Claim. |
| NTS Program Sales | Cable Sat. | A(1) D(2) E | All claims except 2000 satellite withdrawn. 12/9/14 Tr. at 92-93 (Galaz). 101/3332 (2000 Agreement) | A (1). 2000 Claim for satellite royalties cannot be dismissed on this basis, because IPG introduced evidence of Agreement for royalty year 2000. (D)(2). 2000 Claim for satellite royalties cannot be dismissed on this basis. Existence of Agreement renders absence of returned Acknowledgment irrelevant. Lack of Acknowledgment does not evidence termination of Agreement. E. All Claims Dismissed because withdrawn, except 2000 satellite claim. |
| Nu/Hart Hair Clinics, Inc. | Sat. | A(1) (00-01) | Agreement exists. 101/3329-31 | Claim Dismissed. Form Contract unexecuted. |

| CLAIMANT | LICENSE | MPAA OBJECTION | IPG RESPONSE | JUDGES' RULING |
|-------------------------------|---------------|-------------------|---|---|
| Nu/Hart Hair Clinics, Inc. | Sat. | C (00-01) | Agreement exists. 101/3329-31 | Claim Dismissed. Form Contract unexecuted. |
| Nu/Hart Hair Clinics, Inc. | Sat. | D(2) | Agreement exists. 101/3329-31 | Claim Dismissed on this basis as well. Absence of Acknowledgement when no executed Agreement exists corroborates absence of Contract with claimant. |
| Pacific Family Entertainment | Cable Sat. | A(2) | Agreement existed. 101/3338-40 Acknowledgement existed. 102/3601 | Claim Dismissed. Claimant affidavit noting Acknowledgement signed in error. 329 and 330. |
| Pacific Family Entertainment | Cable Sat. | B (01-09) | Agreement existed. 101/3338-40 Acknowledgement existed. 102/3601 | Claim Dismissed. Claimant affidavit noting any IPG authority revoked. 329 and 330. |
| Paradigm Pictures Corporation | Cable Sat. | D(2) | Agreement exists. 101/3341-42 | Claim Allowed. Existence of Agreement renders absence of returned Acknowledgment irrelevant. Lack of Acknowledgment does not evidence termination of Agreement. |
| Paradigm Pictures Corporation | Sat. | E (2000) | None. | Claim Dismissed for 2000 Satellite year. No claim filed. |

| CLAIMANT | LICENSE | MPAA OBJECTION | IPG RESPONSE | JUDGES' RULING |
|---------------------------|---------------|-------------------|----------------------------------|---|
| PMT, Ltd. | Cable Sat. | D(2) | Agreement exists. 101/3341-42 | Claim Allowed. Existence of Agreement renders absence of returned Acknowledgment irrelevant. Lack of Acknowledgment does not evidence termination of Agreement. |
| Productions Pixcom, Inc. | Sat. | D(1) (01-09) | Agreement exists. 101/5190-91 | Claim Allowed. IPG introduced evidence of Agreement. |
| Productions Point de Mire | Sat. | C (2000) | Agreement exists. 101/5192 | Claim cannot be dismissed on this basis. IPG introduced evidence of Agreement. |
| Productions Point de Mire | Sat. | D(2) (2000) | Agreement exists. 101/5192 | Claim cannot be dismissed on this basis. Existence of Agreement renders absence of returned Acknowledgment irrelevant. Lack of Acknowledgment does not evidence termination of Agreement. Also, Extension Letter, when combined with Agreement in evidence, is probative of continuing Agreement. |
| Productions Point de Mire | Sat. | F (2000) | None. | Claim Dismissed. No evidence to show claimant owned copyright or was entitled to collect royalties. |

| CLAIMANT | LICENSE | MPAA OBJECTION | IPG RESPONSE | JUDGES' RULING |
|--------------------------------|------------|-------------------|---|---|
| Psychic Readers Network | Cable Sat. | A(1) | Agreement exists (but with "Tide Group" at different address). 101/3357-59 Acknowledgement exists (directly from claimant). 102/3609 | Claim Allowed. Unlike in 2000-03 proceeding, IPG has provided an Acknowledgment directly from the Claimant, mooted the problem caused by the existence of a different Claimant name on the alleged Agreement. |
| Psychic Readers Network | Sat. | E (2000) | None. | Claim Dismissed for 2000 Satellite year. No claim filed. |
| Quartet Int'l | Cable Sat. | D(2) | Agreement exists. 101/3360-63 | Claim Allowed. Existence of Agreement renders absence of returned Acknowledgment irrelevant. Lack of Acknowledgment does not evidence termination of Agreement. |
| Raycom Sports | Cable Sat. | D(2) | Agreement exists. 101/3366-68 | Claim Allowed. Existence of Agreement renders absence of returned Acknowledgment irrelevant. Lack of Acknowledgment does not evidence termination of Agreement. |
| Ron Hazelton Productions, Inc. | Cable Sat. | D(2) | Agreement exists. 101/3408-11 | Claim Allowed. Existence of Agreement renders absence of returned Acknowledgment irrelevant. Lack of Acknowledgment does not evidence termination of Agreement. |

| CLAIMANT | LICENSE | MPAA OBJECTION | IPG RESPONSE | JUDGES' RULING |
|---------------------------------------|---------------|-------------------|--|--|
| Salem Baptist Church of Chicago, Inc. | Cable | F | None (in Program Supplier category). 115 IPG erroneously listed this claim in the Program Supplier category. 12/9/14 Tr. at 134 (Galaz) | Claim Dismissed (in Program Supplier category). No evidence introduced to show these titles belong in Program Supplier category. |
| Sarrazin Couture Entertainment | Sat. | A(1) (00-02) | Agreement exists (with "The City Productions"). 101/3416-19 | Claim Cannot be allowed on this basis. No evidence sufficient to alter decision to dismiss this claim based on the March 21, 2013 Order in the 2000-03 proceeding. Insufficient evidence that contract with City Productions is applicable to this Claimant. |
| Sarrazin Couture Entertainment | Sat. | D(1) (00-02) | Acknowledgement exists. 102/3613 (Sarrazin); 3620 ("The City Productions") | Claim Allowed. IPG introduced evidence of Acknowledgement from Claimant. |
| Satsuki Ina | Cable Sat. | D(1) (03-09) | Acknowledgement exists. 102/3614 | Claim Allowed. IPG introduced Acknowledgement into evidence, demonstrating that Claimant had ratified IPG's authority to collect royalties on its behalf. |
| Showtime Networks | Cable Sat. | B | Agreement existed. 101/3424-25 | Claim Dismissed. Termination letters from client terminated IPG agency. 308 |

| CLAIMANT | LICENSE | MPAA OBJECTION | IPG RESPONSE | JUDGES' RULING |
|---------------------------|---------------|-------------------|---|--|
| Showtime Networks | Cable Sat. | D(2) | Agreement existed. 101/3424-25 | Objection Overruled. Claim cannot be dismissed on this basis. Existence of Agreement renders absence of returned Acknowledgment irrelevant. Lack of Acknowledgment does not evidence termination of Agreement. |
| Showtime Networks | Cable Sat. | F | Correspondence with client identifying titles owned by Claimant or for which claimant authorized to collect royalties. 106/4633-4636; catalogue searches | Objection Overruled. Claim cannot be dismissed on this basis. Client confirmation of certain titles would permit those titles to be claimed. |
| Slim Goodbody Corporation | Sat. | D(2) (2000) | Agreement exists. 101/3429-30 | Claim cannot be dismissed on this basis. Existence of Agreement renders absence of returned Acknowledgment irrelevant. Lack of Acknowledgment does not evidence termination of Agreement. |
| Slim Goodbody Corporation | Sat. | E (2000) | None. | Claim Dismissed. No claim filed. |
| Slim Goodbody Corporation | Sat. | F (2000) | None. | Claim Dismissed on this basis as well. No evidence to show claimant owned copyright or was entitled to collect royalties. |

| CLAIMANT | LICENSE | MPAA OBJECTION | IPG RESPONSE | JUDGES' RULING |
|---------------------------------------|---------------|-------------------|---|---|
| Small World Productions | Sat. | D(2) (01-03) | Agreement exists. 101/3431-34 | Claim Allowed. Existence of Agreement renders absence of returned Acknowledgment irrelevant. Lack of Acknowledgment does not evidence termination of Agreement. |
| Sound Venture Productions Ottawa Ltd. | Cable Sat. | D(1) (01-09) | Agreement exists. 101/5193-94 Acknowledgement exists. 102/3617 | Claim Allowed. IPG introduced evidence of Agreement and Acknowledgement. |
| Splendid Film Gmbh | Cable Sat. | C (04-09) | None – claim withdrawn. 115 | Claim Dismissed as withdrawn. |
| Splendid Film Gmbh | Cable | D(2) | None – claim withdrawn. 115 | Claim dismissed as withdrawn. |
| St. Jude's Children's Hospital | Sat. | D(2) (00-02) | Agreement exists. 101/3435-37 | Claim Allowed. Existence of Agreement renders absence of returned Acknowledgment irrelevant. Lack of Acknowledgment does not evidence termination of Agreement. |
| Stilson & Stilson | Sat. | D(2) (2000) | Agreement exists 101/3438-39 | Claim Allowed. Existence of Agreement renders absence of returned Acknowledgment irrelevant. Lack of Acknowledgment does not evidence termination of Agreement. |

| CLAIMANT | LICENSE | MPAA OBJECTION | IPG RESPONSE | JUDGES' RULING |
|------------------------|---------------|-------------------|--|--|
| TEAM Communications | Cable Sat. | D(2) | Agreement exists. 101/3444-46 | Claim cannot be dismissed on this basis. Existence of Agreement renders absence of returned Acknowledgment irrelevant. Lack of Acknowledgment does not evidence termination of Agreement. |
| TEAM Communications | Cable Sat. | F | Account statements from Claimant (through AGICOA, a Copyright Management Organization)). 104/3863-70 Catalogue searches | Claim Dismissed. Evidence relating to IPG's authority to seek retransmission rights to this Claimant's programs in the U.S. were not proven by evidence of AGICOA's right to claim on behalf of this Claimant retransmitted outside the United States, especially because that evidence did not identify IPG as the agent. IPG acknowledged that any inference of U.S. rights relied upon the testimony of Raul Galaz, which the Judges did not find persuasive or credible, and which was contradicted by the credible testimony of the MPAA's witness, Jane Saunders. <i>See</i> 12/8/14 Tr. at 105; 172 (Saunders); <i>Id.</i> at 236-239 (Galaz); 12/11/14 Tr. at 15-21; 92-93 (Saunders). |
| TF1 International | Sat. | D(2) (2000) | Agreement exists. 101/3452-53 | Claim cannot be dismissed on this basis. Existence of Agreement renders absence of returned Acknowledgment irrelevant. Lack of Acknowledgment does not evidence termination of Agreement. |

| CLAIMANT | LICENSE | MPAA OBJECTION | IPG RESPONSE | JUDGES' RULING |
|-----------------------------|------------|-------------------------|--|--|
| TF1 International | Sat. | F (2000) | Programs identified in contract documents. 122/3772-75 | Claim Dismissed. No evidence to show claimant owned copyright or was entitled to collect royalties. |
| Today's Homeowner | Cable Sat. | A(2) (04) (00-04) | Agreement existed. 101/3458-61 | Objection Overruled. Claim cannot be dismissed on this basis. IPG has introduced an Agreement in evidence. |
| Today's Homeowner | Cable Sat. | B (04) (00-04) | Agreement existed. 101/3458-61 | Claim Dismissed. Claimant terminated IPG and entered into agreement with MPAA. <i>See</i> MPAA WRS, Vol. II, Ex. 2. |
| Today's Homeowner | Cable Sat. | D(2) (04) (00-04) | Agreement existed. 101/3458-61 | Objection Overruled. Claim cannot be dismissed on this basis. Existence of Agreement renders absence of returned Acknowledgment irrelevant. Lack of Acknowledgment does not evidence termination of Agreement. |
| TV Guide | Cable Sat. | D(2) | Agreement exists. 101/3462-65 | Claim Allowed (except as noted below). Existence of Agreement renders absence of returned Acknowledgment irrelevant. Lack of Acknowledgment does not evidence termination of Agreement. |
| TV Guide | Sat. | E (08) | Alleged copying error by CRB according to testimony of Raul Galaz. | Claim Dismissed for Satellite year 2008. IPG failed to file Claim. |
| TV Matters cka Film Matters | Sat. | E (08) | Alleged copying error by CRB according to testimony of Raul Galaz. | Claim Dismissed for Satellite year 2008. IPG failed to file Claim. |

| CLAIMANT | LICENSE | MPAA OBJECTION | IPG RESPONSE | JUDGES' RULING |
|---------------------------------|---------------|-------------------|--|---|
| Twin Cities Public TV | Cable Sat. | D(2) | Agreement exists. 101/3057-59 | Claim Allowed (except as noted below). Existence of Agreement renders absence of returned Acknowledgment irrelevant. Lack of Acknowledgment does not evidence termination of Agreement. |
| Twin Cities Public TV | Cable Sat. | F | Claimant confirmed titles with IPG. 103/3806-08 | Claim Allowed (except as noted below). Evidence introduced by IPG to show that claimant confirmed titles. |
| Twin Cities Public TV | Sat. | E (08) | Alleged copying error by CRB according to testimony of Raul Galaz. | Claim Dismissed for Satellite year 2008. IPG failed to file Claim. |
| United Negro College Fund | Sat. | E (08) | Alleged copying error by CRB according to testimony of Raul Galaz. | Claim Dismissed for Satellite year 2008. IPG failed to file Claim. |
| United States Olympic Committee | Sat. | A(2) (00-03) | Agreement exists. 101/3474-83 | Claim Dismissed. IPG's claim of agency on behalf of Claimant rejected in 2000-03 Final Determination, and IPG submitted no new evidence to challenge that finding. |
| United States Olympic Committee | Sat. | B (00-03) | Agreement exists. 101/3474-83 | Claim Dismissed. Claimant terminated IPG. 107/5155-56 |
| Uniworld Group | Sat. | D(2) (2000) | Agreement exists. 101/3484-86 | Claim Allowed. Existence of Agreement renders absence of returned Acknowledgment irrelevant. Lack of Acknowledgment does not evidence termination of Agreement. |

| CLAIMANT | LICENSE | MPAA OBJECTION | IPG RESPONSE | JUDGES' RULING |
|---|---------------|-------------------|---|--|
| Urban Latino TV, LLC (cka American Latino) | Cable Sat. | A(2) | Agreement existed. 101/3487-91 Acknowledgement existed. 102/3625 | Claim cannot be dismissed on this basis. IPG introduced evidence of Agreement and Acknowledgement. |
| Urban Latino TV, LLC (cka American Latino) | Cable Sat. | B | Agreement existed. 101/3487-91 Acknowledgement existed. 102/3625 | Claim Dismissed. Client acknowledged erroneous confirmation and also confirmed and declared revocation of any representation by IPG. 331 (In summation, IPG counsel acknowledged no right to collect on behalf of claimant. 12/16/14 Tr. at 79 (Counsel Boydston). |
| Urban Latino TV, LLC (cka American Latino) | Sat. | E (2000) | None. | Claim Dismissed for 2000 Satellite year. No claim filed. |
| Vendome Television | Sat. | D(2) (2000) | None. | Claim Dismissed. No evidence of Agreement or Acknowledgement. |
| Vendome Television | Sat. | E (2000) | None. | Claim Dismissed on this basis as well. No claim filed. |
| Venevision International | Sat. | C (01) | Agreement exists. 101/3492-93 | Claim cannot be dismissed on this basis. IPG introduced evidence of Agreement. |

| CLAIMANT | LICENSE | MPAA OBJECTION | IPG RESPONSE | JUDGES' RULING |
|--------------------------------|---------------|-------------------|--|---|
| Venevision International | Sat. | D(2) (01) | Agreement exists. 101/3492-93 | Claim cannot be dismissed on this basis. Existence of Agreement renders absence of returned Acknowledgment irrelevant. Lack of Acknowledgment does not evidence termination of Agreement. |
| Venevision International | Sat. | F (01) | Programs identified in contract documents. 122/3783-91 | Claim Dismissed. No documentation of programs identified by Claimant. (No page 3791 contained within 122.) |
| Video Media Distribution, Inc. | Sat. | E (08) | Alleged copying error by CRB according to testimony of Raul Galaz. | Claim Dismissed for Satellite year 2008. IPG failed to file Claim |
| Video Tours, Inc. | Cable Sat. | D(2) | Agreement exists. 101/3501-06 | Claim Allowed (except as noted below). Existence of Agreement renders absence of returned Acknowledgment irrelevant. Lack of Acknowledgment does not evidence termination of Agreement. |
| Video Tours, Inc. | Sat. | E (08) | Alleged copying error by CRB according to testimony of Raul Galaz. | Claim Dismissed for Satellite year 2008. IPG failed to file Claim. |
| Watercourse Road Productions | Sat. | E (08) | Alleged copying error by CRB according to testimony of Raul Galaz. | Claim Dismissed for Satellite year 2008. IPG failed to file Claim. |
| West 175 Enterprises | Cable | C | Agreement exists. 101/5195-96 | Claim Allowed (except as noted below). IPG produced evidence of Agreement. |

| CLAIMANT | LICENSE | MPAA OBJECTION | IPG RESPONSE | JUDGES' RULING |
|----------------------------|---------------|----------------------------------|---|--|
| West 175 Enterprises | Cable | D(2) | Agreement exists. 101/5195-96 | Objection Overruled. Existence of Agreement renders absence of returned Acknowledgment irrelevant. Lack of Acknowledgment does not evidence termination of Agreement.308 |
| West 175 Enterprises | Sat. | E (08) | Alleged copying error by CRB according to testimony of Raul Galaz. | Claim Dismissed for Satellite year 2008. IPG failed to file Claim. |
| Whidbey Island Films, Inc. | Cable Sat. | D(1) (01-09) | Agreement exists. 101/5197-5200 Acknowledgement exists. 102/3629 | Claim Allowed (except as noted below). IPG introduced evidence of Agreement and Acknowledgement. |
| Whidbey Island Films, Inc. | Sat. | E (08) | Alleged copying error by CRB according to testimony of Raul Galaz. | Claim Dismissed for Satellite year 2008. IPG failed to file Claim. |
| Willie Wilson Productions | Sat. | E (08) | Alleged copying error by CRB according to testimony of Raul Galaz. | Claim Dismissed for Satellite year 2008. IPG failed to file Claim. |
| World Events Productions | Sat. | E (08) | Alleged copying error by CRB according to testimony of Raul Galaz. | Claim Dismissed for Satellite year 2008. IPG failed to file Claim. |
| Worldwide Pants, Inc. | Cable Sat. | B (06-09) (00-02), (06-09) | Agreement existed. 101/3525-30 | Claim Dismissed. Claimant confirmed termination of IPG.-332 |
| Worldwide Pants, Inc. | Sat. | E (08) | Alleged copying error by CRB according to testimony of Raul Galaz. | Claim Dismissed for Satellite year 2008. IPG failed to file Claim. |

1. **THE “CLAIMANT” COLUMN** LISTS ALPHABETICALLY CLAIMANTS IDENTIFIED BY IPG AND CHALLENGED BY THE MPAA. *SEE* MPAA WRS (CLAIMS), APP. A.
2. **THE “LICENSE” COLUMN** IDENTIFIES OBJECTION AS PERTAINING TO “CABLE” AND/OR “SATELLITE” CLAIMS,;
3. **THE “MPAA OBJECTION” COLUMN** IDENTIFIES THE MPAA’S NINE TYPES OF OBJECTIONS BY LETTER (AND NUMBER WHERE APPLICABLE) CONSISTENT WITH THE TEXT OF THE ORDER AND THE MPAA WRS (CLAIMS), APP. A, AND NOTES WHETHER THE OBJECTION IS LIMITED TO SPECIFIC YEARS,.
4. **THE “IPG RESPONSE” COLUMN** SETS FORTH THE IPG RESPONSE, IF ANY, TO THE MPAA OBJECTION, TOGETHER WITH A REFERENCE TO THE SUPPORTING IPG EXHIBIT.
5. **THE “JUDGES’ RULING” COLUMN** SETS FORTH THE JUDGES’ DECISION ON AN OBJECTION-BY-OBJECTION BASIS, REACHED AFTER CONSIDERING THE EVIDENCE AND ARGUMENTS OF THE MPAA AND IPG.
6. FOR EASE OF REFERENCE, **EXHIBIT REFERENCES** IN THE TABLE UTILIZE THE EXHIBIT NUMBERS BUT NOT THE PREFIXES TO THE EXHIBIT NUMBERS. FOR EXAMPLE, “101/3096” REFERS TO IPG EX. P-101, BATES PAGES 3096-98 CONTAINED THEREIN, AND “327” REFERS TO MPAA EX. 327. (THE PARTIES USED SEPARATE NUMBERING SEQUENCES, SO THAT THE “300” SERIES ONLY APPLIES TO THE MPAA EXHIBITS AND THE EXHIBIT NUMBERS LESS THAN “300” ARE IPG EXHIBITS.

Rulings on SDC Challenges to IPG Claims

| Claimant | License | SDC Objection | IPG Response | Judges' Ruling |
|--|------------|---|------------------|--|
| Adventist Media Center [Productions], Inc. | Sat. | IPG failed to establish copyright ownership for programs listed by IPG for the claimant. | None. | Granted. Adventist is the production company, not the rights owner. |
| Benny Hinn Ministries | Cable Sat. | Claims (2004) filed by All Global Media; IPG not authorized to participate on behalf of this claimant. | None. | Denied. Claims not disallowed for this reason. |
| Benny Hinn Ministries | Cable Sat. | IPG claims do not contain claimant's "full legal name." | No new evidence. | Denied. Claims not disallowed for this reason. |
| Benny Hinn Ministries | Cable Sat. | IPG withheld discovery regarding alleged termination of IPG's representation authority. | None. | Granted. Claims disallowed for failure to make full disclosure in discovery. |
| Billy Graham Evangelistic Association | Cable Sat. | Agreements for 2002 and 2003 lack "mutuality" as the agreements admitted into evidence did not show a signature by IPG. | None. | Denied. Claims allowed for 2002 and 2003. |

| Claimant | License | SDC Objection | IPG Response | Judges' Ruling |
|---|----------------|---|--|--|
| Bob Ross, Inc. | Cable Sat. | IPG continued to file claims on behalf of Bob Ross, Inc. after expiration of their representation agreement. | IPG was unaware of "termination" by Bob Ross, Inc. IPG collected (as a claimant in the Public Television category) and distributed (to Bob Ross, Inc.). IPG implies consent, ratification, estoppel arguments. | Claims disallowed. No effect on Devotional Programming Fund. |
| Claims based on Representation or Mandate Agreements dated "as of" a date, without any indication of the actual signature date. | Cable Sat. | Insufficient proof that IPG had authority, as of the July filing deadline, to file claims for the affected claimants. | None. | Denied. Claims not disallowed for this reason. |
| Claims on behalf of principals whose Representation or Mandate Agreement(s) authorized IPG to collect from "audiovisual copyright collection societies...." | Cable Sat. | Copyright Office is not an "audiovisual copyright collection society". | None. | Denied. Claims not disallowed for this reason. |
| Creflo Dollar Ministries | Cable Sat. | Claims (2004) filed by All Global Media; IPG not authorized to participate on behalf of this claimant. | None. | Denied. Claims not disallowed for this reason. |
| Creflo Dollar Ministries | Cable Sat. | IPG claims do not contain claimant's "full legal name." | No new evidence. | Denied. Claims not disallowed for this reason. |

| Claimant | License | SDC Objection | IPG Response | Judges' Ruling |
|---|----------------|--|---|--|
| Creflo Dollar Ministries | Cable Sat. | IPG withheld discovery regarding alleged termination of IPG's representation authority. | None. | Granted. Claims disallowed for failure to make full disclosure in discovery. |
| Eagle Mountain International Church dba Kenneth Copeland Ministries | Cable Sat. | Claims (2004) filed by All Global Media; IPG not authorized to participate on behalf of this claimant. | None. | Denied. Claims not disallowed for this reason. |
| Eagle Mountain International Church dba Kenneth Copeland Ministries | Cable Sat. | IPG failed to establish copyright ownership for programs listed by IPG for the claimant. | None. | Denied. Claims not disallowed for this reason. |
| Eagle Mountain International Church dba Kenneth Copeland Ministries | Cable Sat. | IPG failed to produce in discovery a second agreement with the claimant. | None. | Granted. Claims disallowed for failure to make full disclosure in discovery. |
| Eagle Mountain International Church dba Kenneth Copeland Ministries | Cable Sat. | IPG withheld discovery regarding alleged termination of IPG's representation authority. As to Eagle Mountain, IPG withheld a second agreement with the claimant. | None. | Granted. Claims disallowed for failure to make full disclosure in discovery. |
| Envoy Productions | Sat. | Mandate Agreement referring to 2000 royalties and signed in July 2002 is insufficient to support a claim for 2001 royalties. | Acknowledgement of Representation for 2001. | Denied. Royalties not allowed for 2001. |

| Claimant | License | SDC Objection | IPG Response | Judges' Ruling |
|---|----------------|--|--|--|
| Envoy Productions | Sat. | Programs not appropriate to qualify as “devotional programming;” thus, not eligible for payment from the Devotional Programming fund. | None. | Granted, <i>except</i> as to the title “The City that Forgot Christmas.” |
| Great Plains National Instructional Library | Cable Sat. | IPG Acknowledgement signed by Restructure Holdings LLC without proof of relationship to GPNIL or its rights. | None. | Granted. No evidence of relationship between GPNIL and Restructure Holdings LLC. |
| Great Plains National Instructional Library | Cable Sat. | Program identification of “Home Sweet Home” without an exemplar or any further information insufficient to establish a right to Devotional Programming funds’ royalties. | Email from an individual | Granted. Program not approved for Devotional Programming funds. |
| IWV Media Group | Cable Sat. | Representation Agreement “recreated” to replace missing or nonexistent agreement authorizing IPG to file claims for 2002-09 satellite and 2004-09 cable royalties. | IWV signed an “Acknowledgement of Representation” covering the relevant periods. | Denied. Acknowledgement is sufficient ratification of agency. |
| Jack Van Impe Ministries International | Cable Sat. | Claims (2004-09) filed by All Global Media; IPG not authorized to participate on behalf of this claimant. | None. | Denied. Claims not disallowed for this reason. |
| Jack Van Impe Ministries International | Cable Sat. | Failure to file 2008 satellite claim. | Pages missing from 2008 satellite claim exhibit due to clerical error. | Granted. Claim not properly filed for 2008. |

| Claimant | License | SDC Objection | IPG Response | Judges' Ruling |
|-----------------------------|----------------|--|--|---|
| Joint Ownership Claims | | IPG has linked several program titles to more than one owner and for more than one year, without specifying which claimant claims for which retransmission year. Judges should disqualify all patently ambiguous claims. | None. | Granted. All titles "cross-claimed" for more than one licensor, <i>except</i> Envoy/Promark are disallowed from both Devotional and Program Suppliers categories. |
| Life Outreach International | Cable Sat. | Failure to file 2008 satellite claim. | Pages missing from 2008 satellite claim exhibit due to clerical error. | Granted. Claim not properly filed for 2008. |
| Paradigm Pictures | Cable Sat. | Claims for 2000 royalties invalid, as claimant did not sign Mandate Agreement until November 2001. | None. | Granted. Royalties not allowed for 2000. |
| Salem Baptist Church, Inc. | Cable Sat. | Claims (2004-09) filed by All Global Media; IPG not authorized to participate on behalf of this claimant. | None. | Denied. Claims not disallowed for this reason. |
| Salem Baptist Church, Inc. | Cable Sat. | Only one Mandate Agreement and for 2001 royalties only. | None. | Granted. Claim allowed for 2001 satellite funds only. |
| Tracee Productions | | Tracee Productions was the corporate alter ego employed by Mr. Galaz for fraudulent claims practices. Failure to withdraw the 1999 satellite claim for Tracee should disqualify IPG. | IPG did not withdraw the 1999 Tracee satellite claim, but neither did IPG include Tracee Productions in any Petition to Participate. | No effect on Devotional Programming Fund. |

| Claimant | License | SDC Objection | IPG Response | Judges' Ruling |
|---------------------------------|----------------|---|--|--|
| Willie Wilson Productions, Inc. | Cable Sat. | Claims (2004-09) filed by All Global Media; IPG not authorized to participate on behalf of this claimant. | None. | Denied. Claims not disallowed for this reason. |
| Willie Wilson Productions, Inc. | Cable Sat. | Failure to file 2008 satellite claim. | Pages missing from 2008 satellite claim exhibit due to clerical error. | Granted. Claim not properly filed for 2008. |
| Willie Wilson Productions, Inc. | Cable Sat. | Programs not appropriate to qualify as “devotional programming;” thus, not eligible for payment from the Devotional Programming fund. | None. | Granted. Program not approved for Devotional Programming funds. Allowed as Program Supplier. |

Before the
COPYRIGHT ROYALTY JUDGES
Washington, D.C.

| | | |
|-----------------------------------|---|---------------------------|
| In the Matter of |) | |
| |) | |
| Proceedings of the |) | Docket No. 17-CRB-0013 RM |
| Copyright Royalty Board; |) | |
| Violation of Standards of Conduct |) | |
| <hr/> |) | |

**COMMENTS OF RAUL GALAZ TO PROPOSED RULE REGARDING
VIOLATION OF STANDARDS OF CONDUCT**

I, Raul Galaz, hereby submit my comments in response to the Proposed Rule of the Copyright Royalty Board (“CRB”) set forth at 82 Fed. Reg. 18601 (April 20, 2017).

PERSONAL STATEMENT

My name is Raul Galaz. I am personally familiar with the facts stated herein and, if called upon could competently testify thereto.

In 2002 I was convicted of one count of mail fraud in connection with my false application for 1996-1998 retransmission royalties that, at the time, I had no authority to collect. I was sentenced to 18 months in a federal prison, and three years of supervised release. After the maximum reduction allowed for good

behavior, I satisfied my sentence. Upon release, I was provided a rarely issued letter of recommendation from the warden of the prison.

I was incarcerated during portions of 2003-2004, and since my release have appeared and testified on many occasions before the CRB, likely more than any other witness before the CRB. I have appeared as a witness on behalf of Worldwide Subsidy Group, LLC (“WSG”) in proceedings relating to 1998-1999 cable, 2000-2003 cable, consolidated 2004-2009 cable and 1999-2009 satellite proceedings (the “Consolidated Proceedings”), and the 2010-2013 cable/satellite proceedings. I have testified orally and through written testimony about a wealth of matters, including as a percipient witness to scores of contracts between WSG and represented claimants, data and evidence supporting particular variations of cable and satellite methodologies, and as a witness critiquing multiple other methodologies. I have been accepted as an expert witness in the CRB proceedings relating to the CRB procedures.

Since my release from incarceration in 2004, in all proceedings before the CRB I have testified fully, honestly, and truthfully, and have never exaggerated. I have never known the results of a distribution methodology before advocating a particular distribution methodology. I have never crafted a distribution methodology in a manner that I believed would be more advantageous to a particular party. I have never asserted the entitlement of WSG to rights that I did

not fully believe WSG was entitled to prosecute. I comfortably assert the foregoing, without exception.

It would be an understatement to assert that I was surprised at the publication of the Proposed Rule. Based upon my review of the Proposed Rule in the Federal Register, I believe that it was designed primarily to exclude myself from the CRB proceedings, and preclude any entity from ever engaging me in CRB proceedings. In my mind, the Proposed Rule is but another extension of the demonization of me personally for acts that I took almost two decades ago.

Obvious issues exist with the legality of the Proposed Rule, and I am thoroughly familiar with those at this point. Nonetheless, even aside from the legality of its provisions, what is as interesting is the motivation that found need for the Judges to propose such regulation. I personally believe that it is a misunderstanding about myself, my motivations, and my actions in the CRB distribution proceedings. I believe that if the Judges had a more thorough understanding regarding such matters, they reasonably would not have submitted the Proposed Rule as a *de facto* means to remove myself from the CRB proceedings.

In my appearances before the CRB in the years since my release from incarceration in 2004, it has been a persistent tug-of-war between myself and WSG counsel as to the extent that my testimony should address the specifics of my

crime, my incarceration, and my life since. From the vantage point of WSG's counsel, such matters are irrelevant to the issues at hand. From my vantage point, I believed that the Judges needed to appreciate the context in which my testimony was being provided, in order to fully understand why under no circumstance I would ever falsely testify about any matter. I understood that my prior criminal conviction would reasonably give the Judges pause to question my credibility, but I also believed that the significance of my life experiences following my conviction would demonstrate why my testimony had to be particularly accurate and unexaggerated.

Ultimately, at the insistence of WSG counsel, my prior conviction was only briefly touched upon during oral testimony in a prior proceeding, sufficient only to explain my motivation for being forthright and open in my testimony. However, my review of the text and motivation for the Proposed Rule make it clear to me now that greater attention should have been given to the subject during my previous testimony, as I strongly believe that if the Judges were fully appreciative of the consequences faced by me for failing to testify truthfully, they would understand why doing so would not merely be imprudent, it would be insane.

Pre-Incarceration

Prior to my conviction, by all accounts I was a successful practicing attorney in the entertainment industry, well-regarded by my peers. Despite this success, I struggled financially. When I first engaged in the activity for which I was convicted, it was because of this financial struggle. I had contacted the owner of the single television program for which I ultimately received royalties, solicited it to be an agent for the collection of such royalties, and was rejected. As much out of irritation, I falsely submitted a claim for the program, understanding that no party was making a claim for such program, and that such program royalties would be forfeited if not claimed.

After the filing of only a handful of forms, a check in the sum of approximately \$80,000 was sent to me by the Motion Picture Association of America. At such point, I was both anxious and concerned. I believed that if I did not deposit the payment, unnecessary attention would be drawn to the situation and the crime revealed. Rationalizing the matter, I told myself that the appropriate claimant would not receive the royalties for failure to have applied, and that such payment would resolve all my financial concerns. Consequently, I deposited the payment.

Based on the false claims received prior to receipt of the check, I continued to receive more payments, in varying amounts. Eventually, however, I learned that

my misdeeds were being scrutinized by the legal authorities. Not wanting to exacerbate the matter, and prior to any contact by the legal authorities, I contacted such authorities in 2001 and confessed everything that I had done. I did so without the protection of a plea agreement, taking responsibility for all my acts and the acts of several other persons that were involved, subject only to the gentleman's agreement that no other persons would be prosecuted for the criminal acts for which I ultimately felt responsible.

The initial response of the legal authorities was to inform me that, while they appreciated my candor, it would be necessary for me to be convicted of a yet-to-be-defined crime, and likely be sentenced to eight months probation. Following this encounter, I merely waited, my attorney being periodically reassured that the matter was of such low priority to the U.S. Attorneys Office that they found no reason to move it along. Unfortunately, in October 2001 and well after my revelation to federal authorities, the scandal involving Enron Corporation occurred. The fallout was an edict by the Attorney General John Ashcroft to declare that all white collar criminal defendants would be treated in the harshest of manner in order to instill a greater sense of confidence by the American public.¹ Immediately

¹ The edict issued by Attorney General John Ashcroft was comparable to the directive recently issued by Attorney General Jeff Sessions, wherein U.S. Attorneys were instructed to prosecute to the full extent possible the potential

following the edict, I was contacted by the U.S. Attorneys Office and informed that their anticipated sentence of eight months probation would now be 18-24 months of actual prison time. Following formal acceptance of my guilty plea, U.S. District Court Judge Henry Kennedy sentenced me to 18 months incarceration, with three years probation, consistent with the U.S. sentencing guidelines that he was compelled to follow.

One significant aspect of my sentencing need be mentioned. In connection with my sentencing, on the advice of various legal counsel within the Copyright Office, the U.S. Copyright Office submitted a letter to U.S. District Judge Henry Kennedy requesting (i) that Raul Galaz “or any entity in which he has an interest” be forever banned from filing retransmission royalty claims or otherwise participating in any proceedings before the U.S. Copyright Office, whether for existing or future claims, and (ii) that the Judge deem all agreements between any royalty claimant and the company founded by Raul Galaz (Worldwide Subsidy Group, LLC) as subject to rescission. Effectively, the Copyright Office sought to scuttle WSG entirely for the unrelated prior criminal activity of one of its principals.

charges against individuals arrested for drug related charges, reversing a policy instituted by Attorney General Eric Holder.

Notably, my criminal act did not involve WSG, predominately preceded the formation of WSG, and I was not even the majority owner of WSG. Nevertheless, the Copyright Office's request to Judge Kennedy, clearly sought to punish WSG because it was affiliated with me. In response, Judge Kennedy strongly rebuked the request of the Register of Copyrights, noted that he did not even have the authority to issue such a determination, and (contrary to the request of the Copyright Office) *affirmatively* held that I could continue to participate in the retransmission royalty proceedings subject only to the caveat that I would submit no claims on behalf of any party without first obtaining written authorization from such claimant. Specifically, Judge Kennedy was responding to the fact that I was an acknowledged expert in the field of retransmission royalties, and wanted to preserve my ability to continue working in such profession. To avoid any allegation that could subject me to possible violation, I consciously chose to not file any claims with the U.S. Copyright Office, *ever*, and have not filed a claim with the Copyright Office since at least July 2000.

What appears clear is that the Proposed Rule seeks to formulate criteria that is designed to apply only to WSG and myself, and therefor implement a sanction against WSG and myself that was expressly rejected by U.S. District Court Judge Henry Kennedy in 2002 and again in 2005. As such, this stands as the second

occasion in which governmental authorities have attempted to circumvent the ruling of Judge Kennedy. See *infra*.

Incarceration

As one might imagine, there is an extraordinary feeling of shame when one must inform the persons in one's life that one has been convicted of a crime, and will be sent to prison. My situation was not unique in that regard, and that conversation occurred with family members, friends, and neighbors. While unpleasant, the worst aspect of the situation was my separation from my children. At the time, they were 8 and 11 years old. Not wanting to expose them to my circumstance, I avoided having them brought to visit me for the initial six months of my sentence. My contact was therefore limited to a fifteen minute phone call that could only be partaken once on any given day. After the initial visit six months into my sentence, I was generally able to see my children once every 4-6 weeks, in the confines of the prison, of course.

Since my incarceration, I view with contempt the public's general belief that certain federal prisons are like "country club living". They are not. I was incarcerated in Three Rivers, Texas, which housed 200-300 inmates, and my experience included random body cavity searches, malnutrition, lacking medical care, summarily imposed punishments, and an astounding number of acts that are quite evidently designed to humiliate an individual.

Despite having the highest level of education of any individual at the prison, I was initially assigned what is considered the most menial job in the prison, a bathroom detail. I took it in stride, and after performing well for several months, was told that I would be assigned a job as an education tutor as an appreciation for my efforts. The job was commensurate with my capabilities, roughly half the inmates were illiterate, and I looked forward to the opportunity to help better persons' lives. The day before my scheduled reassignment, however, an individual in the prison submitted multiple formal grievances against the head of the prison camp. Believing that the inmate must have had help from an attorney, and me being the only attorney in the camp, suspicion and guilt was summarily placed on me. As what was no doubt intended as a punishment for something with which I was not involved, I was assigned the next day to the most physically demanding position at the camp. The position was typically assigned to youths that exhibit significant disciplinary problems. At 41, I was twice the age of any other person assigned the position, which involved laboring in fields in the extraordinary South Texas heat.

Because of the extreme physical requirements and the heat, it was necessary to wash my sweat-drenched clothes every day. In light of the physical requirements, the ability to intake calories was critical. Nonetheless, the source of all food at the prison was questionable, the amount was significantly restricted, and

I particularly recall one instance in which turkey legs were served from a box labeled “not for human consumption”. I entered prison at my natural weight of 210 pounds. When I left prison I weighed 145 pounds, having lost approximately one-third of my body mass. Residual effects from my time in prison include current bouts with skin cancer from my exposure to the sun.

Life after incarceration

Life after incarceration is very different for different people. In my circumstance, I was repeatedly informed by probation officers that I could not apply for or take a variety of jobs, for a variety of specious reasons.² In fact, despite my education level, I was directed toward employment at a car wash and working for a telemarketer. Eventually, I obtained a position in construction. After several years, and with options limited, I began performing compensated work for WSG again.

Notwithstanding, my work for WSG did not commence smoothly. In 2005 and while I was still subject to supervised release, I informed my probation officer that I desired to provide uncompensated part-time services to WSG, assisting it with its royalties collection business. Despite the dictate of Judge Kennedy, the

² For example, I was denied the opportunity to work at a television station in a production capacity because my “crime involved television”.

probation officer forbid me from engaging in such business. I consequently filed a motion with the sentencing court, informing it of the refusal of the probation officer to allow my participation in such business, and sought an order allowing my further participation. The order was opposed by the United States (on behalf of the Copyright Office) and the MPAA. Notwithstanding, on January 27, 2006, Judge Henry Kennedy issued an order reading as follows:

ORDERED that this court's judgment must be interpreted and implemented in accordance with the plain meaning of the words employed to express it; and it is further

ORDERED that Mr. Galaz is able to engage in the profession of television royalty collection during his period of supervised release, subject only to the restriction imposed by this court that he "file no further claims with the United States Copyright Office unless he presents written authorization from the company verifying his representation."

As is clear, the Copyright Office sought to altogether prohibit my involvement in the royalties collection industry (including CRB proceedings), and was rebuked, despite the relative recency of the conviction. No differently, the Proposed Rule currently seeks to altogether prohibit my involvement in the CRB proceedings as a consequence of the same acts that I engaged in almost two decades ago.

At every turn since my conviction, other parties have sought to take advantage of my prior criminal conviction for their personal profit, making

significant unsupportable allegations against me (and sometimes WSG and its principals) with no threat of consequence. In the most extreme circumstance, and after nine years of litigation, I was found liable for making a fraudulent transfer and found liable for approximately \$770,000 that I never controlled or received.³

³ The action was filed in 2008, and concluded in 2017. The initial judgment was for \$1,770,000, however such portion of the judgment as was awarded to Julian Jackson (see discussion, *infra*) was reversed when the appellate court determined that the bankruptcy court had exceeded its jurisdiction by addressing disputes between Julian Jackson and myself.

Each and every pleading filed by my adversaries started by reference to my criminal conviction, which bore no relation to the matter. Despite the action moving back and forth between a bankruptcy court, a federal district court, and a federal appellate court on nine separate occasions, and despite the vocal protests of my legal counsel, on none of those nine circumstances would any of those courts address the single most significant item of evidence that exonerated me from any liability – emails demonstrating the “nominal” value of the transferred rights at the time of transfer (a fact attested to by the expert witnesses for *both* the plaintiff and defendants), and my attempts to transfer the rights on several occasions to unrelated third parties, which offers had been rejected because of the immaterial value of the rights.

A surreal experience existed by which a bankruptcy court judge issued approximately 100 rulings against me pursuant to various motions, *not once* ruling in my favor on the most trivial of matters. Once a final determination was issued by the bankruptcy court, the burden shifted, requiring me to establish that no evidence existed to possibly support any particular finding. Despite a wealth of unrefuted contradictory evidence, the district court refused to allow any personal appearances before it and, as part of its final review, *refused to even allow me to submit pleadings identifying the obvious bankruptcy court errors that were being appealed*. Ultimately, I was found to have engaged in a fraud for sending a demand letter to the co-owner of rights (Julian Jackson) at the address *required* by the company’s Operating Agreement, i.e., a fraud for actually complying with an agreement, even after such co-owner testified that he had never informed me of an alternative address. The exonerating facts, while compelling, are not addressed in

Most recently, the Settling Devotional Claimants have presented this ruling to the Judges, arguing that it bears relevance to matters before the CRB.

More recently, in litigation to which WSG is suing a former client for breach of contract, the client alleged that following my incarceration I had “continued my thieving ways” and stolen \$350,000 from such company. Notably, the client’s own records revealed that all royalties had been appropriately accounted for, and it was demonstrated that I never even had access to WSG’s financial accounts from which the monies were ostensibly placed into. For such evident reason, when faced with documentation in its own possession, the client’s pleadings thereafter sat silent on the accusation, and the client never even counterclaimed in the same litigation for return of the “stolen \$350,000”. Cognizant that the “absolute litigation privilege” protected it from a defamation claim, the entity made its

any of the several opinions that were issued, but are extensively detailed in the appellate briefs that were filed on my behalf.

Coincidentally, approximately two years into the litigation it was discovered that the attorney for my adversary, who was my ex-wife, had been the former law clerk of the bankruptcy judge, and his wife had been the administrative clerk for such bankruptcy judge. Conveniently, such facts were never brought to my attention by the bankruptcy judge, and were only revealed in a context that precluded a motion for recusal.

accusation against me with malicious knowledge of its falsity simply to influence the judge.⁴

My efforts to redress my past misdeeds include my agreement to garnish 25% of my income from WSG. Similar efforts include bringing suit to restore the status quo. One of the individuals that assisted in my crime and received a significant portion of what was illicitly obtained, an individual named Julian Jackson, refused to disgorge that amount and return it to the MPAA. Despite having written records of the conveyances, the identity of the individual, the individual's bank account, and my testimony, the U.S. Attorneys Office made no effort to either prosecute such individual or pursue this easy restitution. As such, following my release from incarceration, I took it upon myself to compel the individual's restitution to the MPAA, and brought suit against the individual to do so. At the trial court level, while opining that I had testified openly and honestly and that the defendant had falsely denied his participation in the criminal act, the trial court denied judgement on grounds of statute of limitations. When I appealed

⁴ While the Judge indicated that such allegations had no influence on the matters before him, he nonetheless refused to strike such allegations as "scandalous", inaccurate, or irrelevant, on the (inaccurate) grounds that his ability to strike on such grounds was limited to "pleadings", i.e., the complaint and answer in the action. As such, forever appearing on the internet is the accusation made by the particular defendant that I have "stolen \$350,000 from it", while I can neither seek the striking of such language, nor sue the entity for making a maliciously false allegation against me.

the matter, the appellate court affirmed the lower court determination, but on the grounds that I was attempting to “enforce an illegal contract”. Amazingly, such was *never* a position taken by me, never appeared in briefs, and was simply a creation of the California appellate court. Nevertheless, since the date of the appellate court decision, parties regularly assert that I had the gall to sue an individual to “enforce an illegal contract”.⁵

In what was perhaps the most surprising of situations, several years after I was released from incarceration I was appearing as a witness to a matter and was being deposed. In the course of the deposition, I was asked about my “disbarment” in California. I noted that I had never been disbarred, and that the deposer was mistaken, only then to be shown a copy of the order disbaring me on the basis of my criminal conviction *while* I was a practicing attorney. The matter made no sense because I had stopped practicing law years prior to my conviction, had moved from California three years prior to the conviction, and had gone “inactive” with the State Bar and later resigned my license prior to my conviction. What was subsequently revealed was remarkable. Even though records reflect that the MPAA apprised the State Bar of my criminal conviction within weeks of its occurrence, several years subsequent the MPAA renewed its efforts to enlist the

⁵ In fact, the action was based on an equitable claim seeking to *undo* an illegal action, and was premised explicitly on case law endorsing such a theory of relief.

support of the California State Bar to seek disbarment of me, even though I had not been a licensed attorney for over six years. In the state of California, an attorney's resignation is not official until "accepted" by the California Supreme Court, a process that takes several months. What was discovered was that *six years* after my conviction, the State Bar filed a motion with the California Supreme Court asking it to "vacate" its acceptance of my resignation. Receiving no opposition, the Supreme Court obliged, whereupon the State Bar immediately instituted disbarment proceedings against me based on the fiction that for the prior seven years I had been a practicing attorney and was convicted of a felony during such time. Again, receiving no opposition, the California Supreme Court obliged.

The California State Bar, however, had falsely informed the Supreme Court that I had been served with the several pleadings leading to the disbarment. No fewer than ten pleadings were discovered that had been sent to me at an address at which I had not lived for over five years, and no information was brought to the attention of the Supreme Court as to the return of mail addressed to me at such address. Moreover, the disbarment process had occurred years after the limitations period had passed for such disbarment process and, on such grounds alone, would have been rejected as untimely.

After discovering my "disbarment" in the deposition referenced above, I filed papers with the California Supreme Court setting forth the truth of the

circumstances. As a result, and appropriately, upon consideration of the foregoing, the California Supreme Court “vacated” its prior order “vacating” acceptance of my resignation, thereby restoring the status quo. All of the foregoing was initiated by the hand of the MPAA prior to my significant involvement with the CRB proceedings in the event that I did subsequently participate in the CRB proceedings, for no purpose other than to hold me up as a “disbarred attorney” and, if the Judges recall, no denial or objection came from MPAA counsel when certain of these matters were testified to in prior CRB proceedings.

In sum, post-incarceration accusations of “fraud” and other malfeasance against me have become a frequent occurrence in any proceeding in which I am involved, including the CRB proceedings, no matter how attenuated my connection to a matter. My integrity is regularly assaulted, sometimes by covert means, by parties as part of their strategy to cast me as a habitual criminal and have such character assassinations published online. Moreover, WSG’s adversaries have now broadened the scope of their allegations, accusing my family members and WSG counsel of fraudulent acts. While inaccurate, defending such allegations is distressing and, I believe, a basis for adjudicators believing that I am some sort of habitual criminal. That is, *allegations* of fraud in one context have been cited to support *allegations* in other contexts, then the latter are cited to support the former. Ultimately, I believe that seeing so much “smoke” makes adjudicators such as the

CRB believe that there must be “fire”, regardless of how compelling evidence to the contrary may be.

The Judges’ claimed “need” for the Proposed Rule.

It is in the foregoing light that I view the CRB’s determination that I lied in 2015 CRB proceedings about the content of certain WSG files. That is, I view it as a determination based on no evidence other than the Judges’ belief that I must be *presumed* to be lying, and to disregard any evidence to the contrary. *I did not lie*, by any stretch of the imagination, and when such determination was made by the current panel of CRB judges it infuriated me. No one enjoys defending themselves from false allegations, but the zeal by which I have maintained an honest lifestyle was clearly unappreciated and unknown by the Judges. Notwithstanding, the ostensible “lie”, premised solely on a policy that was demonstrated to have not been followed by the CRB staff either with regard to its intake of 2008 satellite claims, its intake of 2008 cable claims, or any claims processed by the CRB over several years, made clear to me the contempt with which the current panel of Judges appear to hold me. This contempt is unwarranted, has been displayed by the current panel of Judges in a myriad of decisions, and, I believe, is now the basis offered as the “need” for the Proposed Rule.

In my mind, there is no question that the Proposed Rule is punitive in nature. It is not intended to address any problem with the standards and professionalism of parties participating in the CRB proceedings. Rather, it is solely for the purpose of punishing me for acts taken decades ago for which I have already been extensively punished (both formally and informally, openly and covertly), and for acts in which I never engaged. No different than my assignment to a manual labor detail in a south Texas prison, the Proposed Rule has been introduced to summarily punish me without a fair opportunity address the actions that ostensibly create a “need” for the Proposed Rule.

As was made clear to the Judges in one of my earliest appearances providing oral testimony, the fact that I have already been convicted of a felony means that any subsequent criminal act will result in an exacerbated sentence. What is clearly not appreciated by the Judges is that, knowing that any finding of “lying” or “perjury” will result in an *exacerbated* sentence against me under the federal sentencing guidelines, *WHY* would I ever risk engaging in any criminal act? The Judges concluded that I “lied” about the contents of a WSG file and the source of a particular document to avoid the consequence of denying certain 2008 satellite claims (*if* any program claims even existed for such claimants, which had not been determined) for WSG claimants appearing on four pages of a claim in only one of seventeen royalty pools being prosecuted at the time (*if* any program claims even

existed for such claimants, which had not been clearly determined). All things being equal, the “lie” would have been to preserve 2.35% of the royalties claimed by WSG in the particular proceeding, of which WSG typically receives 25% of the net revenues, i.e., 0.58% of the amount claimed by WSG ($1/17 \times 4/10 \times .25 = .0058$). Common sense reveals the irrationality of my perjuring myself, yet that is exactly what the Judges ascribed to me as having done - - engaging in an unethical criminal act to imperceptibly benefit the company for which I worked.

No doubt, there will be those who read this statement and believe that its primary purpose is to seek sympathy for what has already transpired. That would miss the point. The true purpose is to illustrate the fact that most persons, and likely the CRB Judges, only see a small part of the situation that drives personal motivations, and often reach conclusions based on a misimpression. That is what I believe has occurred here, in connection with the Judges’ promulgation of the Proposed Rule. The Judges see an individual who committed a crime and at every turn is accused of having engaged in some other form of fraud, thereby making it all too easy for them to presume the worst and make findings that, if honestly considered, have no basis in reasonable fact. This is what I believe was the driving force behind the Judges conclusion in 2015 that I “lied” about the contents of the WSG file and the source of a particular document, one of the only two circumstances the Judges cite as a “need” for the Proposed Rule. The Judges do

not see an individual who has gone to extraordinary lengths to remedy a past misdeed, avoid even the opportunity for malfeasance, yet at every turn is accused of the same. Consideration of the motivations of the accusers comprehensively explains why this occurs.

CONCLUSION

On a personal note, I can say that the CRB proceedings have taken a great toll on my life. I try to slough off the frequent unwarranted allegations of misconduct, and tell myself that it is narcissistic to care so much about what others think. However, I cannot deny the anguish that sets in on me when unfairly accused of acts that I did not commit, am attributed motivations that I never even considered, and am forced to repeatedly refute far-fetched accusations against myself and associated persons that are fabricated by WSG's adversaries for no other reason than to increase their share of the retransmission royalties being distributed by the CRB.⁶

⁶ An example of this is revealed even in the Judges' announcement of the Proposed Rule in the *Federal Register*. Therein, at footnote 3, the Judges cite to the transfer of representation from WSG to Multigroup Claimants for 2010 and forward, citing to an allegation set forth in *a brief filed by the MPAA* that the "transfer to a family member doing business under a newly-registered business name, [was] perhaps with the intention of avoiding the loss of the presumption of validity." Literally nothing exists to validate such accusation, which is based on nothing more than the MPAA's open speculation as to the motivation for the

My feelings regarding my post-conviction involvement in the CRB proceedings range from the defiance I feel whenever I am faced with yet another false allegation of malfeasance (whatever that might be), regret for how my mere presence in such proceedings has exposed family members and legal counsel to unwarranted accusations, to the *satisfaction* that I am complying with promises that I made to claimants several years ago to prosecute their rights as professionally as I am able. However, what I do not feel, under any circumstance is shame for how I have conducted myself post-conviction.

I submit that the Proposed Rule need not be enacted.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Respectfully submitted,

May 22, 2017

_____/s/_____
Raul Galaz

transfer. The accusation is patently false, the Judges do not have before them any evidence to support it, yet the Judges apparently consider the possibility of the allegation at this time, citing to it as though it may be accurate or may have some relation to the Proposed Rule.

UNITED STATES COPYRIGHT ROYALTY JUDGES
The Library of Congress

In re

Distribution of 2000, 2001, 2002 and 2003
Cable Royalty Funds

Docket No. 2008-02 CRB CD 2000-03
(Phase II)

FINAL ORDER OF DISTRIBUTION
(Program Suppliers Category)

The captioned consolidated royalty distribution proceeding concluded on August 14, 2015, when the United States Court of Appeals for the D.C. Circuit issued a mandate relating to their June 30, 2015, order affirming the distribution shares for claimants in the Program Suppliers category as determined by the Copyright Royalty Judges (Judges). After the mandate, the Judges received filings from Worldwide Subsidy Group dba Independent Producers Group (IPG) and the Motion Picture Association of America (MPAA) contesting the appropriate methodology for distribution of the remaining royalty funds on deposit.

By order dated November 25, 2015, the Judges directed MPAA to provide historical context from which the Judges and the Licensing Division of the Copyright Office could distribute accurately the funds, taking into account prior partial distributions, fund growth through accrued interest, and deductions for Licensing Division costs. MPAA provided the necessary information on December 7, 2015. The Licensing Division staff provided accounting services to assure accurate distribution in accordance with the Judges' orders.

The Licensing Division calculated that, as of February 17, 2016, the total distribution to IPG for each royalty year should be:

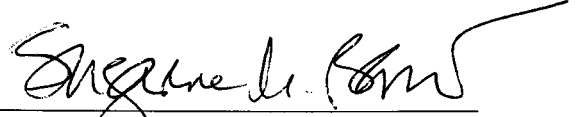
| | |
|-------|-------------|
| 2000 | \$ 617,719 |
| 2001 | 164,203 |
| 2002 | 197,725 |
| 2003 | 125,884 |
| Total | \$1,105,531 |

Now, therefore, the Judges hereby **ORDER** that the Licensing Division make final distribution to IPG in the amounts listed, adjusted if necessary to reflect interest accrued or costs incurred from and after February 17, 2016, to the date of distribution.

The Judges **FURTHER ORDER** that the Licensing Division distribute simultaneously the remaining funds in the Program Suppliers category for royalty years 2000, 2001, 2002, and 2003, inclusive, to MPAA.

The Judges **FURTHER ORDER** that IPG and MPAA provide to the Licensing Division all necessary and pertinent information to facilitate the transfer by March 31, 2016.

SO ORDERED.

A handwritten signature in black ink, appearing to read "Suzanne M. Barnett", written over a horizontal line.

Suzanne M. Barnett
Chief Copyright Royalty Judge

DATED: March 22, 2016

UNITED STATES COPYRIGHT ROYALTY JUDGES
The Library of Congress

| | |
|---|--|
| <i>In re</i> DISTRIBUTION OF 2004, 2005, 2006, 2007, 2008, and 2009 Cable Royalty Funds | DOCKET NO. 2012-6 CRB CD 2004-09 (Phase II) |
| <i>In re</i> DISTRIBUTION OF 1999, 2000, 2001, 2002, 2003, 2004, 2005, 2006, 2007, 2008, and 2009 Satellite Royalty Funds | DOCKET NO. 2012-7 CRB SD 1999-2009 (Phase II) |

ORDER DIRECTING PARTIAL DISTRIBUTION OF PROGRAM SUPPLIERS' CABLE ROYALTIES TO IPG-REPRESENTED CLAIMANTS FOR 2004 THROUGH 2009

On September 29, 2016, the Copyright Royalty Judges (Judges) granted in part a motion from Worldwide Subsidy Group LLC dba Independent Producers Group (IPG) for a partial distribution of Program Suppliers cable royalties for 2004 through 2009 pursuant to Section 801(b)(3)(C) of the Copyright Act. The Judges granted IPG's request for a partial distribution of cable royalties from the Program Suppliers category for the years 2004-2009 in the amount of 60% of 0.23% (or 0.138%) of the Program Suppliers category share of cable royalties for 2004 through 2009. *Order Granting in Part and Denying in Part IPG's Motion for Partial Distribution of Program Suppliers' Royalties.*

To facilitate the partial distribution, the Judges directed MPAA as representative of the "Phase I" Program Suppliers category, to provide to the Licensing Division of the Copyright Office, the CRB, and IPG the percentage of total cable royalties, broken down by fund (*i.e.*, Basic, 3.75%, and Syndex) and by year, for 2004 through 2009, that the Program Suppliers Category received by agreement of the "Phase I" category participants. The Judges noted that upon receipt of the required information from MPAA, the Judges would issue an order directing the Licensing Division to disburse funds to IPG upon filing of a required executed payback agreement. *Id.* MPAA provided the requested information on October 11, 2016. *Joint Response of the Phase I Parties to Order Granting in Part and Denying in Part IPG's Motion for Partial Distribution of Program Suppliers Royalties (Restricted).*

Based on the information that MPAA provided, the Licensing Division determined the dollar amounts by year, after deduction of allowed costs and addition of accrued interest, that should be distributed to IPG as agent for the claimants that it represents in the Program Suppliers

category. The Licensing Division's calculations are detailed in Attachment A. The Judges approve the methodology and the results of those calculations.

Pursuant to the Judges' September 29, 2016, order and the Licensing Division's calculations, the Judges hereby direct the Licensing Division to distribute to IPG as agent for IPG-represented claimants in the Program Suppliers category the following amounts by year:

2004: \$69,339.91
2005: \$71,373.23
2006: \$70,098.02
2007: \$69,188.88
2008: \$74,429.78
2009: \$81,326.19

The Licensing Division shall make the distribution *provided that* IPG provides to the Judges, with a copy to the Licensing Division, a signed agreement in the form required by the Copyright Office stating that IPG shall repay to the Copyright Office any overpayment that may result from the distribution of these funds together with interest in the amount that would have accrued if the principal had remained in the fund.

IPG shall provide to the Judges and to the Licensing Division no later than December 1, 2016, all pertinent information to effect the transfer of funds. The Licensing Division shall distribute the funds to IPG on or after December 8, 2016.

IT IS SO ORDERED.

Suzanne M. Barnett
Chief Copyright Royalty Judge

Dated: November 9, 2016



**PARTIAL DISTRIBUTION OF THE 2004-2009 CABLE ROYALTY FUNDS
PROGRAM SUPPLIER FOR THE IPG CLAIMANT**

**PLEASE NOTE THAT THIS INFORMATION MAY BE SUBJECT TO A PROTECTVE ORDER THAT THE PARTIES HAVE ENTERED INTO
As of October 31, 2016**

| | 2004 Cable | 2005 Cable | 2006 Cable | 2007 Cable | 2008 Cable | 2009 Cable | Total |
|------------|--------------------|--------------------|--------------------|--------------------|--------------------|--------------------|---------------------|
| IPG | \$69,339.91 | \$71,373.23 | \$70,098.02 | \$69,188.88 | \$74,429.78 | \$81,326.19 | \$435,756.01 |

| Cable Year For the Period of | 2004 01/01/2004 to 10/31/16 | 2005 01/01/2004 to 10/31/16 | 2006 01/01/2004 to 10/31/16 | 2007 01/01/2004 to 10/31/16 | 2008 01/01/2004 to 10/31/16 | 2009 01/01/2004 to 10/31/16 | | | | | | |
|--|--------------------------------|--------------------------------|--------------------------------|--------------------------------|--------------------------------|--------------------------------|------------|------------------|------------|------------------|------------|------------------|
| Royalty fees deposited | \$134,656,781.61 | \$137,509,029.54 | \$143,501,590.15 | \$147,362,735.38 | \$161,448,157.81 | \$179,003,666.87 | | | | | | |
| Addition(s) to deposits | \$18,619.22 | \$69,529.47 | \$104,081.15 | \$169,047.02 | \$115,527.71 | \$11,833.98 | | | | | | |
| Deduction(s) from deposits | \$4,146,395.06 | \$4,555,227.00 | \$4,543,485.67 | \$5,109,387.19 | \$5,881,881.06 | \$7,214,529.56 | | | | | | |
| Net royalty fees deposited | \$130,529,005.77 | \$133,023,332.01 | \$139,062,185.63 | \$142,422,395.21 | \$155,681,804.46 | \$171,800,971.29 | | | | | | |
| Fund Total Without Interest | \$130,529,005.77 | \$133,023,332.01 | \$139,062,185.63 | \$142,422,395.21 | \$155,681,804.46 | \$171,800,971.29 | | | | | | |
| Distribution Calculations | Distribution Calculations | Distribution Calculations | Distribution Calculations | Distribution Calculations | Distribution Calculations | Distribution Calculations | | | | | | |
| Fund Total | \$130,529,005.77 | \$133,023,332.01 | \$139,062,185.63 | \$142,422,395.21 | \$155,681,804.46 | \$171,800,971.29 | | | | | | |
| Total Funds Available to Other Claimants | \$130,529,005.77 | \$133,023,332.01 | \$139,062,185.63 | \$142,422,395.21 | \$155,681,804.46 | \$171,800,971.29 | | | | | | |
| Breakdown of Funds | | | | | | | | | | | | |
| Basic | 85.83100% | \$112,034,350.94 | 87.29100% | \$116,117,396.74 | 88.11100% | \$122,529,082.38 | 88.91400% | \$126,633,448.48 | 88.65300% | \$138,016,590.11 | 89.17500% | \$153,203,516.15 |
| 3.75% | 14.15200% | \$18,472,464.90 | 12.67700% | \$16,863,367.80 | 11.87300% | \$16,510,853.30 | 11.06800% | \$15,763,310.70 | 11.33100% | \$17,640,305.26 | 10.81200% | \$18,575,121.02 |
| Syndex | 0.01700% | \$22,189.93 | 0.03200% | \$42,567.47 | 0.01600% | \$22,249.95 | 0.01800% | \$25,636.03 | 0.01600% | \$24,909.09 | 0.01300% | \$22,334.13 |
| | 100.00000% | \$130,529,005.77 | 100.00000% | \$133,023,332.01 | 100.00000% | \$139,062,185.63 | 100.00000% | \$142,422,395.21 | 100.00000% | \$155,681,804.46 | 100.00000% | \$171,800,971.29 |
| Basic Fund Program Suppliers | 33.040000% | \$37,016,149.55 | 34.340000% | \$39,874,714.04 | 33.740000% | \$41,341,312.40 | 33.740000% | \$42,726,125.52 | 33.740000% | \$46,566,797.50 | 33.740000% | \$51,690,866.35 |
| 3.75% Fund Program Suppliers | 36.040000% | \$6,657,476.35 | 37.430000% | \$6,311,958.57 | 36.730000% | \$6,064,436.42 | 36.730000% | \$5,789,864.02 | 36.730000% | \$6,479,284.12 | 36.730000% | \$6,822,641.95 |
| Syndex Fund Program Suppliers | 95.830000% | \$21,264.61 | 96.230000% | \$40,962.67 | 96.030000% | \$21,366.63 | 96.030000% | \$24,618.28 | 96.030000% | \$23,920.20 | 96.030000% | \$21,447.46 |
| Total Program Suppliers | | \$43,694,890.51 | | \$46,227,635.28 | | \$47,427,115.44 | | \$48,540,607.82 | | \$53,070,001.82 | | \$58,534,955.76 |
| Independent Producers Group Base | 0.138000% | \$60,298.95 | 0.138000% | \$63,794.14 | 0.138000% | \$65,449.42 | 0.138000% | \$66,986.04 | 0.138000% | \$73,236.60 | 0.138000% | \$80,778.24 |

For Copyright Royalty Board use only

2004 CABLE

| | Available for Distribution 4/24/08 | Distribution 04/24/08 | Balance | Change Thru 6/11/09 | Available for Distribution 06/11/09 | Distribution 06/11/09 | Balance 06/11/06 | Change Thru 03/01/12 | Available for distribution 03/01/12 | Distribution 03/01/12 | Balance | Change Thru 10/30/14 | Available for Distribution 10/30/14 | Distribution 10/30/14 | Balance 10/30/14 | Change Thru 10/17/16 | Available for Distribution 10/17/2016 |
|----------------------------------|---------------------------------------|--------------------------|---------------|------------------------|---|--------------------------|---------------------|-------------------------|---|--------------------------|--------------|-------------------------|---|--------------------------|---------------------|-------------------------|---|
| Royalty fees deposited | 134 142 482.00 | | | 314 528.93 | | | | 167 399.69 | | | | 32 288.25 | | | | 82.74 | |
| Addition(s) to deposits | 18 619.22 | | | | | | | | | | | | | | | | |
| Deduction(s) from deposits | 3 893 613.66 | | | 161 565.66 | | | | 65 741.46 | | | | 25 474.28 | | | | | |
| Net royalty fees deposited | <u>130 267 487.56</u> | 65 133 743.78 | 65 133 743.78 | 152 963.27 | 65 286 707.05 | | | | 74 044 737.69 | | | | 3 333 072.82 | | | | 3 136 782.55 |
| Interest Reinvested | | | | 8 789 709.97 | | | | | 574 956.88 | | | | 7 074.49 | | | | 3 304.29 |
| Interest Bearing Base | 130 267 487.56 | | | | 74 076 417.01 | 133 337.55 | 73 943 079.46 | 101 658.23 | 74 619 694.57 | 71 293 435.72 | 3 326 258.85 | 6 813.97 | 3 340 147.31 | 203 447.50 | 3 136 699.81 | 82.74 | 3 140 086.84 |
| Interest | <u>17 579 419.93</u> | 8 789 709.98 | 8 789 709.97 | 575 993.67 | 575 993.67 | 1 036.79 | 574 956.88 | 158 705.62 | 158 705.62 | 151 631.13 | 7 074.49 | 3 518.61 | 3 518.61 | 214.32 | 3 304.29 | 6 901.58 | 6 901.58 |
| Funds Available for Distr bution | <u>147 846 907.49</u> | 73 923 453.75 | 73 923 453.74 | 728 956.94 | 74 652 410.68 | 134 374.34 | 74 518 036.34 | 260 363.85 | 74 778 400.19 | 71 445 066.85 | 3 333 333.34 | 10 332.58 | 3 343 665.92 | 203 661.82 | 3 140 004.10 | 6 984.32 | 3 146 988.42 |
| IPG | 60 298.95 | | | | 68 436.21 | | | | 68 968.35 | | | | 69 115.03 | | | | 69 187.84 |
| % of Interest Earned | 0.13494863729 | | | | 0.00777566860 | | | | 0.00212685968 | | | | 0.00105342959 | | | | 0.00219789463 |
| IPG Interest | 8 137.26 | | | | 532.14 | | | | 146.69 | | | | 72.81 | | | | 152.07 |
| | 68 436.21 | | | | 68 968.35 | | | | 69 115.03 | | | | 69 187.84 | | | | 69 339.91 |
| Terms of Distribution | 50% | | | | 74 518 036.34 | | | | 71 445 066.85 | | | | 203 661.82 | | | | |
| | | | | | 0.9982000001 | | | | 0.9554238479 | | | | 0.060909739 | | | | |
| | | | | | 0.0017999999 | | | | | | | | | | | | |

For Copyright Royalty Board use only

2005 CABLE

| | Available for Distribution 4/24/08 | Distribution 04/24/08 | Balance | Change Thru 6/11/09 | Available for Distribution 06/11/09 | Distribution 06/11/09 | Balance 06/11/09 | Change Thru 03/01/12 | Available for distribution 03/01/12 | Distribution 03/01/12 | Balance | Change Thru 10/30/14 | Available for Distribution 10/30/14 | Distribution 10/30/14 | Balance 10/30/14 | Change Thru 10/17/16 | Available for Distribution 4/17/2016 |
|----------------------------------|---------------------------------------|--------------------------|---------------|------------------------|---|--------------------------|---------------------|-------------------------|---|--------------------------|--------------|-------------------------|---|--------------------------|---------------------|-------------------------|--|
| Royalty fees deposited | 136 916 191.30 | | | 389 086.44 | | | | 134 808.42 | | | | 68 844.80 | | | | 98.58 | |
| Addition(s) to deposits | 51 320.84 | | | 18 152.88 | | | | | | | | 55.75 | | | | - | |
| Deduction(s) from deposits | 4 619 745.59 | | | (156 870.38) | | | | 74 899.03 | | | | 17 452.76 | | | | - | |
| Net royalty fees deposited | <u>132 347 766.55</u> | 66 173 883.28 | 66 173 883.28 | 564 109.70 | 66 737 992.98 | | | | 73 564 917.47 | | | | 3 377 706.82 | | | | 3 171 486.31 |
| Interest Reinvested | | | | | 6 899 562.73 | | | | 569 835.83 | | | | 7 074.31 | | | | 3 299.81 |
| Interest Bearing Base | 132 347 766.55 | | | | 73 637 555.69 | 132 547.61 | 73 505 008.09 | 59 909.39 | 74 134 753.30 | 70 808 494.27 | 3 326 259.03 | 51 447.79 | 3 384 781.13 | 213 393.40 | 3 171 387.73 | 98.58 | 3 174 786.12 |
| Interest | <u>13 799 125.43</u> | 6 899 562.73 | 6 899 562.73 | 570 863.38 | 570 863.38 | 1 027.55 | 569 835.83 | 157 670.30 | 157 670.30 | 150 595.99 | 7 074.31 | 3 521.84 | 3 521.84 | 222.03 | 3 299.81 | 6 977.84 | 6 977.84 |
| Funds Available for Distribution | <u>146 146 891.98</u> | 73 073 445.99 | 73 073 445.99 | 1 134 973.08 | 74 208 419.07 | 133 575.16 | 74 074 843.92 | 217 579.69 | 74 292 423.60 | 70 959 090.26 | 3 333 333.34 | 54 969.63 | 3 388 302.97 | 213 615.43 | 3 174 687.54 | 7 076.42 | 3 181 763.96 |
| IPG | 63 794.14 | | | | 70 445.58 | | | | 70 991.70 | | | | 71 142.68 | | | | 71 216.71 |
| % of Interest Earned | 0.10426413524 | | | | 0.00775234016 | | | | 0.00212680683 | | | | 0.00104049268 | | | | 0.00219789294 |
| IPG Interest | 6 651.44 | | | | 546.12 | | | | 150.99 | | | | 74.02 | | | | 156.53 |
| | 70 445.58 | | | | 70 991.70 | | | | 71 142.68 | | | | 71 216.71 | | | | 71 373.23 |
| Terms of Distribution | 50% | | | | 74 074 843.91 | | | | 70 959 090.26 | | | | 213 615.43 | | | | |
| | | | | | 0.9981999999 | | | | 0.9551322574 | | | | 0.063044961 | | | | |
| | | | | | 0.0018000001 | | | | | | | | | | | | |

For Copyright Royalty Board use only

2006 CABLE

| | Available for Distr but ion 12/18/08 | Distribution 12/18/08 | Balance | Change Thru 03/01/12 | Available for Distribution 03/01/12 | Distribution 03/01/12 | Balance 03/01/12 | Change Thru 10/30/14 | Available for distribution 10/30/14 | Distribution 10/30/14 | Balance | Change Thru 10/31/16 | Available for Distribution 10/31/16 | |
|----------------------------------|---|--------------------------|---------------|-------------------------|---|--------------------------|---------------------|-------------------------|---|--------------------------|--------------|-------------------------|---|---|
| Royalty fees deposited | 142 158 063.22 | | | 1 222 090.53 | | | | 121 289.04 | | | | 147.36 | | |
| Addition(s) to deposits | <u>90 824.15</u> | | | 13 133.09 | | | | 123.91 | | | | - | | - |
| Deduction(s) from deposits | <u>4 337 362.32</u> | | | 169 784.42 | | | | 36 338.93 | | | | - | | - |
| Net royalty fees deposited | 137 911 525.05 | 68 955 762.53 | 68 955 762.53 | 1 065 439.20 | 70 021 201.73 | | | | 3 410 076.99 | | | | 3 205 457.79 | - |
| Interest Reinvested | | | | | 4 475 839.86 | | | | 8 330.36 | | | | 3 303.26 | - |
| Interest Bearing Base | 137 911 525.05 | | | | 74 497 041.57 | 71 172 038.61 | 3 325 002.97 | 85 074.02 | 3 418 407.35 | 213 096.92 | 3 205 310.43 | 147.36 | 3 208 761.05 | - |
| Interest | <u>8 951 679.71</u> | 4 475 839.87 | 4 475 839.87 | 186 642.56 | 186 642.56 | 178 312.20 | 8 330.36 | 3 522.87 | 3 522.87 | 219.61 | 3 303.26 | 7 052.45 | 7 052.45 | - |
| Funds Available for Distribution | <u>146 863 204.76</u> | 73 431 602.38 | 73 431 602.38 | 1 252 081.76 | 74 683 684.14 | 71 350 350.81 | 3 333 333.33 | 88 596.89 | 3 421 930.22 | 213 316.53 | 3 208 613.69 | 7 199.81 | 3 215 813.50 | - |
| IPG | 65 449.42 | | | | 69 697.67 | | | | 69 872.29 | | | | 69 944.29 | |
| % of Interest Earned | 0.06490885883 | | | | 0.00250536875 | | | | 0.00103055887 | | | | 0.00219787323 | |
| IPG Interest | 4 248.25 | | | | 174.62 | | | | 72.01 | | | | 153.73 | |
| | 69 697.67 | | | | 69 872.29 | | | | 69 944.29 | | | | 70 098.02 | |
| Terms of Distribution | 50% | | | | 3 333 333.33 | | | | 213 316.53 | | | | | |
| | | | | | 0.0446326847 | | | | 0.0623380713 | | | | | |
| | | | | | 0.9553673153 | | | | | | | | | |

For Copyright Royalty Board use only

2007 CABLE

| | 11/27/2009 | Distribution 11/27/09 | Balance | Change Thru 03/01/12 | Available for Distribution 03/01/12 | Distribution 03/01/12 | Balance 03/01/12 | Change Thru 10/30/14 | Available for distribution 10/30/14 | Distribution 10/30/14 | Balance | Change Thru 10/31/16 | Available for Distribution 10/31/16 |
|----------------------------------|-----------------------|--------------------------|---------------|-------------------------|---|--------------------------|---------------------|-------------------------|---|--------------------------|--------------|-------------------------|---|
| Royalty fees deposited | 146 542 755.56 | | | 736 488.03 | | | | 83 343.52 | | | | 148.27 | |
| Addition(s) to deposits | 161 459.27 | | | 7 461.02 | | | | 126.73 | | | | - | |
| Deduction(s) from deposits | <u>5 024 451.37</u> | | | 62 020.61 | | | | 22 915.21 | | | | - | |
| Net royalty fees deposited | <u>141 679 763.46</u> | 70 839 881.73 | 70 839 881.73 | 681 928.44 | 71 521 810.17 | | | | 3 388 847.24 | | | | 3 174 369.76 |
| Interest Reinvested | | | | | 1 982 694.81 | | | | 5 041.13 | | | | 3 312.70 |
| Interest Bearing Base | 141 679 763.46 | | | | 73 504 504.98 | 70 176 212.79 | 3 328 292.20 | 60 555.04 | 3 393 888.37 | 219 666.88 | 3 174 221.49 | 148.27 | 3 177 682.46 |
| | | | | | | | | | | | | | |
| Interest | <u>3 965 389.62</u> | 1 982 694.82 | 1 982 694.82 | 111 332.02 | 111 332.02 | 106 290.89 | 5 041.13 | 3 541.95 | 3 541.95 | 229.25 | 3 312.70 | 6 984.13 | 6 984.13 |
| Funds Available for Distribution | <u>145 645 153.08</u> | 72 822 576.54 | 72 822 576.54 | 793 260.46 | 73 615 837.00 | 70 282 503.67 | 3 333 333.33 | 64 096.99 | 3 397 430.32 | 219 896.13 | 3 177 534.19 | 7 132.40 | 3 184 666.59 |
| | | | | | | | | | | | | | |
| IPG | 66 986.04 | | | | 68 860.87 | | | | 68 965.17 | | | | 69 037.14 |
| % of Interest Earned | 0.02798839808 | | | | 0.00151462853 | | | | 0.00104362596 | | | | 0.00219786907 |
| IPG Interest | 1 874.83 | | | | 104.30 | | | | 71.97 | | | | 151.73 |
| | 68 860.87 | | | | 68 965.17 | | | | 69 037.14 | | | | 69 188.88 |
| | | | | | | | | | | | | | |
| Terms of Distribution | 50% | | | | 3 333 333.33 | | | | 219 896.13 | | | | |
| | | | | | 0.0452801118 | | | | 0.0647242502 | | | | |
| | | | | | 0.9547198882 | | | | | | | | |

For Copyright Royalty Board use only

2008 CABLE

| | Distribution 2/10/2011 09/07/06 | | Balance | Change Thru 03/01/12 | Available for Distribution 03/01/12 | Distribution 03/01/12 | Balance 03/01/12 | Change Thru 10/30/14 | Available for distribution 10/30/14 | Distribution 10/30/14 | Balance | Change Thru 10/31/16 | Available for Distribution 10/31/16 |
|----------------------------------|------------------------------------|---------------|---------------|-------------------------|---|--------------------------|---------------------|-------------------------|---|--------------------------|--------------|-------------------------|---|
| Royalty fees deposited | 161 268 345.91 | | | 99 915.24 | | | | 77 865.62 | | | | 231.04 | |
| Addition(s) to deposits | 114 097.66 | | | 3 107.23 | | | | 122.82 | | | | - | |
| Deduction(s) from deposits | 5 628 919.01 | | | 248 621.89 | | | | 2 797.18 | | | | 1 542.98 | |
| Net royalty fees deposited | <u>155 753 524.56</u> | 77 876 762.28 | 77 876 762.28 | (145 599.42) | 77 731 162.86 | | | | 3 407 780.63 | | | | 3 237 480.46 |
| Interest Reinvested | | | | | 995 629.08 | | | | 743.96 | | | | 3 365.29 |
| Interest Bearing Base | 155 753 524.56 | | | | 78 726 791.93 | 75 394 202.57 | 3 332 589.37 | 75 191.26 | 3 408 524.59 | 169 732.19 | 3 238 792.40 | (1 311.94) | 3 240 845.75 |
| Interest | <u>1 991 258.16</u> | 995 629.09 | 995 629.09 | 17 574.84 | 17 574.84 | 16 830.88 | 743.96 | 3 541.65 | 3 541.65 | 176.36 | 3 365.29 | 7 122.84 | 7 122.84 |
| Funds Available for Distribution | <u>157 744 782.72</u> | 78 872 391.36 | 78 872 391.36 | (128 024.58) | 78 744 366.78 | 75 411 033.44 | 3 333 333.33 | 78 732.91 | 3 412 066.24 | 169 908.55 | 3 242 157.69 | 5 810.90 | 3 247 968.59 |
| IPG | 73 236.60 | | | | 74 172.91 | | | | 74 189.46 | | | | 74 266.55 |
| % of Interest Earned | 0.01278467480 | | | | 0.00022323836 | | | | 0.00103905661 | | | | 0.00219783370 |
| IPG Interest | 936.31 | | | | 16.56 | | | | 77.09 | | | | 163.23 |
| | 74 172.91 | | | | 74 189.46 | | | | 74 266.55 | | | | 74 429.78 |
| Terms of Distribution | 50% | | | | 3 333 333.33 | | | | 169 908.55 | | | | - |
| | | | | | 0.0423310704 | | | | 0.0497963809 | | | | - |
| | | | | | 0.9576689296 | | | | | | | | |

For Copyright Royalty Board use only

2009 CABLE

| | Available for Distribution 10/27/11 | Distribution 09/07/06 | Balance | Change Thru 03/01/12 | Available for Distribution 03/01/12 | Distribution 03/01/12 | Balance 03/01/12 | Change Thru 10/30/14 | Available for distribution 10/30/14 | Distribution 10/30/14 | Balance | Change Thru 10/31/16 | Available for Distribution 10/31/16 |
|----------------------------------|--|--------------------------|---------------|-------------------------|---|--------------------------|---------------------|-------------------------|---|--------------------------|--------------|-------------------------|---|
| Royalty fees deposited | 178,825,362.58 | | | 64,110.36 | | | | 112,573.99 | | | | 189.94 | |
| Addition(s) to deposits | 10,752.08 | | | 1,526.83 | | | | 1,015.07 | | | | (30.00) | |
| Deduction(s) from deposits | <u>6,233,224.33</u> | | | 7,758.17 | | | | 327,311.33 | | | | 646,235.73 | |
| Net royalty fees deposited | <u>172,602,890.33</u> | 86,301,445.17 | 86,301,445.17 | 57,879.02 | 86,359,324.19 | | | | 3,119,552.73 | | | | 2,384,303.16 |
| Interest Reinvested | | | | | 294,392.70 | | | | 58.33 | | | | 3,442.30 |
| Interest Bearing Base | <u>172,602,890.33</u> | | | | 86,653,716.89 | 83,320,441.89 | 3,333,275.00 | (213,722.27) | 3,119,611.06 | 89,232.11 | 3,030,378.95 | (646,075.79) | 2,387,745.46 |
| Interest | <u>588,785.40</u> | 294,392.70 | 294,392.71 | 1,516.37 | 1,516.37 | 1,458.04 | 58.33 | 3,543.66 | 3,543.66 | 101.36 | 3,442.30 | 5,264.29 | 5,264.29 |
| Funds Available for Distribution | 173,191,675.73 | 86,595,837.86 | 86,595,837.87 | 59,395.39 | 86,655,233.26 | 83,321,899.93 | 3,333,333.33 | (210,178.61) | 3,123,154.72 | 89,333.47 | 3,033,821.25 | (640,811.50) | 2,393,009.75 |
| IPG | 80,778.24 | | | | 81,053.79 | | | | 81,055.21 | | | | 81,147.28 |
| % of Interest Earned | 0.00341121402 | | | | 0.00001749919 | | | | 0.00113593007 | | | | 0.00220471155 |
| IPG Interest | 275.55 | | | | 1.42 | | | | 92.07 | | | | 178.91 |
| | 81,053.79 | | | | 81,055.21 | | | | 81,147.28 | | | | 81,326.19 |
| Terms of Distribution | 50% | | | | 3,333,333.33 | | | | 89,333.47 | | | | - |
| | | | | | 0.0384666131 | | | | 0.0286036005 | | | | - |
| | | | | | 0.9615333869 | | | | | | | | |

UNITED STATES COPYRIGHT ROYALTY JUDGES
The Library of Congress

In re

Distribution of 1998-1999 Cable Royalty
Funds

Docket No. 2008-1 CRB CD 1998-1999
(Phase II)

**ORDER GRANTING IPG's MOTION
FOR FINAL DISTRIBUTION OF 1999 CABLE ROYALTIES
(Devotional Category)**

The captioned consolidated royalty distribution proceeding concluded on April 6, 2017, when the United States Court of Appeals for the D.C. Circuit issued a mandate relating to the February 10, 2017, order affirming the distribution shares for claimants in the Devotional category as determined by the Copyright Royalty Judges (Judges). After the mandate, the Judges received a motion from Worldwide Subsidy Group LLC dba Independent Producers Group (IPG) requesting final distribution of 1999 cable royalties in the Devotional category as set forth in the Judges' final determination in which IPG was awarded 28.7% of the 1999 cable royalties for the Devotional category, with the remaining 71.3% being awarded to the Settling Devotional Claimants (SDC). 80 FR 13423, 13443 (March 13, 2015). The Motion was unopposed.¹

After adding accrued interest² and deducting appropriately allocated expenses, the Licensing Division of the Copyright Office calculated that, as of July 13, 2017, the respective final distributions for IPG and SDC for 1999 are:³

| Party | Principal | Interest | Total |
|-------|-------------------|------------|------------|
| IPG | 361,396.90 | 116,587.04 | 477,983.94 |
| SDC | 293,091.21 | 59,743.72 | 352,834.93 |
| Total | 654,488.11 | 176,330.76 | 830,818.87 |

¹ The SDC filed a response to IPG's motion in which the SDC states that IPG fully briefed its case before the U.S. Court of Appeals for the D.C. Circuit (Case No. 15-1093) rather than withdraw its appeal as IPG states in its motion. Nevertheless, the SDC consents to the relief IPG requests in its motion. *See* Settling Devotional Claimant's Response to Independent Producers Group's Motion for Final Distribution of the 1998 and 1999 Cable Royalty Funds for the Devotional Category at 1 (Apr. 13, 2017).

² The Licensing Division has allocated accrued interest to SDC and IPG, respectively, as if the distribution allocation the Judges ordered had been applied to each year's fund from the date funds were deposited until the date any portion of those funds was disbursed (or from which Copyright Office expenses were deducted). Interest ceases to accrue on funds when they are disbursed. In this regard, in completing the final distribution of Devotional Category funds, the Licensing Division reviewed the dates and amounts of any partial distributions in determining an appropriate *pro rata* allocation of accrued interest.

³ The Licensing Division's calculations, which are shown on Attachment A to this Order, are based on the Notice of Settlement of 1998 Phase II Devotional Claims and Motion for Distribution of Funds, Docket No. 2001-8 CARP CD 98-99 (Nov. 14, 2003), in which the Devotional Claimants notified the Copyright Office that all known Phase I parties approved a stipulated share to the Devotionals to 1998 and 1999 cable royalty funds of 1.19375% of the Basic Funds and 0.90725% of the 3.75% Funds. The Notice and Stipulation are Attachment B to this Order.

Therefore, the Judges hereby **ORDER** the Licensing Division to make final distribution to IPG and SDC in the amounts listed.

The Judges **FURTHER ORDER** that IPG and SDC provide to the Licensing Division all necessary and pertinent information to facilitate the transfer by July 6, 2017.

SO ORDERED.

Suzanne M. Barnett
Chief Copyright Royalty Judge

DATED: June 12, 2017

Attachments

ATTACHMENT A

For Copyright Royalty Board Use

**FINAL DISTRIBUTION OF
1999 CABLE ROYALTIES
Independent Producers Group
Settling Devotional Claimants
July 13, 2017**

| Devotional Category | Principal | Interest Earned Thru 7/13/2017 | Total Available for Distribution 7/13/2017 |
|--|----------------------|---|---|
| Independent Producers Group (IPG) | \$ 361,396.90 | \$ 116,587.04 | \$ 477,983.94 |
| Settling Devotional Claimants (SDC) | \$ 293,091.21 | \$ 59,743.72 | \$ 352,834.93 |
| Total | \$ 654,488.11 | \$ 176,330.76 | \$ 830,818.87 |

DEVOTIONAL CLAIMANTS DISTRIBUTION BASE

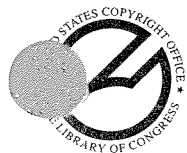
| Cable Year For the Period of | | 1999 Cable 01/01/99-07/13/17 |
|--|------------|---------------------------------|
| Royalty fees deposited | | \$113,131,115.18 |
| Addition(s) to deposits | | \$360,747.66 |
| Deduction(s) from deposits | | \$5,331,756.30 |
| Net royalty fees for distribution | | <u>\$108,160,106.54</u> |
| | | |
| Fund Total | | \$108,160,106.54 |
| National Public Radio | | \$217,284.70 |
| Total Funds Available to Other Claimants | | \$107,942,821.84 |
| Breakdown of Funds: | | |
| Basic | 90.71700% | \$97,922,489.69 |
| 3.75% | 9.21800% | \$9,950,169.32 |
| Syndex | 0.06500% | \$70,162.83 |
| | 100.00000% | \$107,942,821.84 |
| | | |
| Basic Fund Devotional Claimants | 1.193750% | \$1,168,949.72 |
| 3.75% Fund Devotional Claimants | 0.907250% | \$90,272.91 |
| Syndex Fund Devotional Claimants | | \$0.00 |
| Total Devotional Claimants | | \$1,259,222.63 |
| ***** | | |
| Independent Producers Group Base | 28.700000% | \$361,396.90 |
| Settling Devotional Claimants Base | 71.300000% | \$897,825.74 |
| Total Devotional Claimants Base | | <u>\$1,259,222.63</u> |

For Copyright Royalty Board Use
1999 CABLE - Independent Producers Group

| | Available for Distribution 10/16/01 | Distribution 10/31/2001 | Balance 10/31/01 | Change Thru 3/27/2003 | Available for Distribution 03/27/03 | Distribution 3/27/2003 | Balance 03/27/03 | Chanage Thru 4/19/07 | Available for Distribution 4/19/07 | Distribution 04/19/07 | Balance 04/19/07 | Change Thru 6/7/07 | Available for Distribution 6/7/07 | Distribution 6/7/07 | Balance 6/7/07 | Change Thru 2/28/13 | Available for Distribution 2/28/13 | Distribution 2/28/2013 | Balance 2/28/2013 | Change thru 7/13/17 | Available for Distribution 7/13/17 |
|--------------------------------------|--|----------------------------|---------------------|--------------------------|---|---------------------------|---------------------|-------------------------|--|--------------------------|---------------------|-----------------------|---|------------------------|----------------|------------------------|--|---------------------------|----------------------|---------------------------|--|
| Royalty fees deposited | 112,540,799.71 | | | | | | | | | | | | | | | 149.82 | | | | | |
| Addition(s) to deposits | 98,900.60 | | | | | | | | | | | | | | | | | | | | |
| Deduction(s) from deposits | 4,519,664.79 | | | | | | | | | | | | | | | | | | | | |
| Net royalty fees deposited | 108,120,035.52 | 54,060,017.76 | 54,060,017.76 | 527,247.50 | 54,587,265.26 | | | | 59,325,204.81 | | | | 42,005,617.90 | | | | 2,849,102.44 | | | | 794,328.17 |
| Interest Reinvested | | | | | 5,333,122.54 | | | | 1,397,677.59 | | | | 4,868,580.49 | | | | 18,385.05 | | | | 33,127.02 |
| Interest Bearing Base | 108,120,035.52 | | | | 59,920,387.80 | 107,856.69 | 59,812,531.11 | (487,326.30) | 60,722,882.40 | 18,717,264.50 | 42,005,617.90 | - | 46,874,198.38 | 44,025,245.77 | 2,848,952.62 | 149.82 | 2,867,487.48 | 2,073,159.31 | 794,328.17 | | 827,455.19 |
| Interest | 10,666,245.08 | 5,333,122.54 | 5,333,122.54 | 1,400,197.95 | 1,400,197.95 | 2,520.36 | 1,397,677.59 | 7,037,969.09 | 7,037,969.09 | 2,169,388.60 | 4,868,580.49 | 302,491.62 | 302,491.62 | 284,106.57 | 18,385.05 | 119,587.00 | 119,587.00 | 86,459.98 | 33,127.02 | 4,532.63 | 4,532.63 |
| Funds Available for Distribution | 118,786,280.60 | 59,393,140.29 | 59,393,140.30 | 1,927,445.45 | 61,320,585.76 | 110,377.05 | 61,210,208.70 | 6,550,642.79 | 67,760,851.50 | 20,886,653.11 | 46,874,198.38 | 302,491.62 | 47,176,690.01 | 44,309,352.35 | 2,867,337.66 | 119,736.82 | 2,987,074.48 | 2,159,619.29 | 827,455.19 | 4,532.63 | 831,987.82 |
| Independent Producers Group | 361,396.90 | | | | 397,049.38 | | | | 406,327.49 | | | | 453,422.10 | | | | 456,348.15 | | | | 475,379.91 |
| % of Interest Earned | 0.09865188287 | | | | 0.02336763832 | | | | 0.11590307989 | | | | 0.00645326492 | | | | 0.04170445407 | | | | 0.00547779510 |
| Independent Producers Group Interest | 35,652.48 | | | | 9,278.11 | | | | 47,094.61 | | | | 2,926.05 | | | | 19,031.75 | | | | 2,604.03 |
| | 397,049.38 | | | | 406,327.49 | | | | 453,422.10 | | | | 456,348.15 | | | | 475,379.89 | | | | 477,983.94 |
| Terms of Distribution | 50% | | | | 61,210,208.71 | | | | 20,886,653.11 | | | | 44,309,352.35 | | | | 2,159,619.29 | | | | |
| | | | | | 0.99820000001 | | | | 0.3082407120 | | | | 0.939221305 | | | | 0.722988095 | | | | |
| | | | | | 0.00179999999 | | | | | | | | | | | | | | | | |

| For Copyright Royalty Board Use | | | | | | | | | | | | | | | | | | | | | |
|--|--|----------------------------|---------------------|--------------|---|---------------------------|--------------------|-------------------------|--|-------------------------|---------------------|-----------------------|---|------------------------|---------------------|------------------------|--|---------------------------|----------------------|---------------------------|--|
| 1999 CABLE- Settling Devotional Claimants | | | | | | | | | | | | | | | | | | | | | |
| | Available for Distribution 10/16/01 | Distribution 10/31/2001 | Balance 10/31/01 | 3/27/2003 | Available for Distribution 03/27/03 | Distribution 3/27/2003 | Balance 3/27/03 | Chanage Thru 4/19/07 | Available for Distribution 4/19/03 | Distribution 4/19/03 | Balance 04/19/03 | Change Thru 6/7/07 | Available for Distribution 6/7/07 | Distribution 6/7/07 | Balance 06/07/07 | Change Thru 2/28/13 | Available for Distribution 2/28/13 | Distribution 2/28/2013 | Balance 2/28/2013 | Change Thru 7/13/17 | Available for Distribution 7/13/17 |
| Royalty fees deposited | 112,540,799.71 | | | | | | | | | | | | | | | 149.82 | | | | | |
| Addition(s) to deposits | 98,900.60 | | | | | | | | | | | | | | | | | | | | |
| Deduction(s) from deposits | 4,519,664.79 | | | | | | | | | | | | | | | | | | | | |
| Net royalty fees deposited | 108,120,035.52 | 54,060,017.76 | 54,060,017.76 | 527,247.50 | 54,587,265.26 | | | | 59,325,204.81 | | | | 42,005,617.90 | | | | 2,849,102.44 | | | | 794,328.17 |
| Interest Reinvested | | | | | 5,333,122.54 | | | | 1,397,677.59 | | | | 4,868,580.49 | | | | 18,385.05 | | | | 33,127.02 |
| Interest Bearing Base | 108,120,035.52 | | | | 59,920,387.80 | 107,856.69 | 59,812,531.11 | (487,326.30) | 60,722,882.40 | 18,717,264.50 | 42,005,617.90 | - | 46,874,198.38 | 44,025,245.77 | 2,848,952.62 | 149.82 | 2,867,487.48 | 2,073,159.31 | 794,328.17 | | 827,455.19 |
| Interest | 10,666,245.08 | 5,333,122.54 | 5,333,122.54 | 1,400,197.95 | 1,400,197.95 | 2,520.36 | 1,397,677.59 | 7,037,969.09 | 7,037,969.09 | 2,169,388.60 | 4,868,580.49 | 302,491.62 | 302,491.62 | 284,106.57 | 18,385.05 | 119,587.00 | 119,587.00 | 86,459.98 | 33,127.02 | 4,532.63 | 4,532.63 |
| Funds Available for Distribution | 118,786,280.60 | 59,393,140.29 | 59,393,140.30 | 1,927,445.45 | 61,320,585.76 | 110,377.05 | 61,210,208.70 | 6,550,642.79 | 67,760,851.50 | 20,886,653.11 | 46,874,198.38 | 302,491.62 | 47,176,690.01 | 44,309,352.35 | 2,867,337.66 | 119,736.82 | 2,987,074.48 | 2,159,619.29 | 827,455.19 | 4,532.63 | 831,987.82 |
| Settling Devotional Claimants | 897,825.74 | | | | 293,091.21 | | | | 299,940.06 | | | | 334,704.04 | | | | 336,863.97 | | | | 350,912.71 |
| % of Interest Earned | 0.09865188287 | | | | 0.02336763832 | | | | 0.11590307989 | | | | 0.00645326492 | | | | 0.04170445407 | | | 0.00547779510 | |
| Settling Devotional Claimants | 88,572.20 | | | | 6,848.85 | | | | 34,763.98 | | | | 2,159.93 | | | | 14,048.73 | | | 1,922.23 | 59,743.72 |
| | 986,397.94 | | | | 299,940.06 | | | | 334,704.04 | | | | 336,863.97 | | | | 350,912.69 | | | | 352,834.93 |
| 10/31/01 Distribution paid to Devotional Claimants | (693,306.73) | | | | | | | | | | | | | | | | | | | | |
| Terms of Distribution | 50% | | | | 61,210,208.71 | | | | 20,886,653.11 | | | | 44,309,352.35 | | | | 2,159,619.29 | | | | |
| | | | | | 0.9982000001 | | | | 0.3082407120 | | | | 0.939221305 | | | | 0.722988095 | | | | |
| | | | | | 0.0017999999 | | | | | | | | | | | | | | | | |

ATTACHMENT B



In the Matter of

Distribution of the 1998-1999 Cable
Royalty Funds

}
}
} Docket No. 2001-8 CARP CD 98-99
}
}

LIBRARY
OF
CONGRESS

ORDER

On November 14, 2003, The Christian Broadcasting Network, Inc., Crystal Cathedral Ministries, Inc., Coral Ridge Ministries Media, Inc., Oral Roberts Evangelistic Association, Liberty Broadcasting Network, Inc., Jimmy Swaggart Ministries, In Touch Ministries, Inc., Independent Producers Group, and National Association of Broadcasters (hereinafter "Devotional Claimants"), by their counsel, filed a notice of settlement with respect to 1998 Phase II Devotional Claims¹ and a joint motion for final distribution of all remaining 1998 cable royalty fees due the Devotional Claimants.

Section 111(d)(4)(C) of the Copyright Act, title 17 of the United States Code, authorizes distributions of royalty fees to the copyright owners entitled to receive them, provided that the amounts distributed are not in controversy. See, e.g., Order, Docket No. 2000-6 CARP CD 98 (October 12, 2000) and Order, Docket No. 2001-6 CARP CD 99 (October 17, 2001). Because all Phase II controversies concerning the distribution of the 1998 cable royalty fees have been settled and no other controversies exist regarding the distribution of the royalty fees in this category, the Register determines that it is appropriate to make a final distribution of the remaining funds allocated to the Devotional category pursuant to the Notice of Settlement.

Wherefore, **IT IS ORDERED** that the Devotional Claimants' motion for a final distribution is **GRANTED**. The Devotional Claimants shall receive the remainder of the 1998 cable royalty fees on or after December 4, 2003, provided that the Devotional Claimants submit all pertinent information to the Licensing Division of the Copyright Office no later than one week prior to the scheduled distribution.

SO ORDERED.

Marybeth Peters
Marybeth Peters
Register of Copyrights

DATED: November 19, 2003

¹ On November 15, 2002, the Devotional Claimants filed a stipulation of settlement, informing the Office that the Devotional Claimants had reached a settlement with all other Phase I Claimants with respect to the 1998 and 1999 cable royalty fees. In accordance with that agreement, the Phase I Claimants stipulated and agreed that Devotional Claimants shall receive 1.19375% of the Basic Funds and 0.90725% of the 3.75% Funds of the 1998 and 1999 cable royalty fees after adjusting for National Public Radio's agreed-upon share of 0.18% of the entire fund.

**Before the
COPYRIGHT ROYALTY JUDGES
Washington, D.C.**

| | | |
|--|---|---|
| <hr/> |) | |
| In the Matter of |) | |
| |) | Docket No. 2012-6 CRB CD 2004-2009 |
| |) | (Phase II) |
| Distribution of the 2004, 2005, 2006, 2007, |) | |
| 2008 and 2009 Cable Royalty Funds |) | |
| <hr/> |) | |

| | | |
|--|---|---|
| <hr/> |) | |
| In the Matter of |) | |
| |) | Docket No. 2012-7 CRB SD 1999-2009 |
| |) | (Phase II) |
| Distribution of the 1999-2009 Satellite |) | |
| Royalty Funds |) | |
| <hr/> |) | |

Declaration of Walter J. Kowalski

My name is Walter J. Kowalski. I am an adult over the age of 18 years and I declare the following based on my personal knowledge:

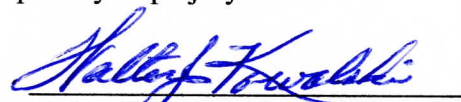
1. I am the President of Bob Ross, Inc. ("BRI").
2. BRI is the copyright owner and producer of the television series, *The Joy of Painting*, as well as programs titled *The Best of Joy of Painting*, and *Bob Ross: The Happy Painter*.
3. In July 2002, I executed a contract entitled Mandate Agreement that granted Independent Producers Group ("IPG") the right to file a claim for cable and satellite royalties for calendar year 2001. A true and correct copy of the agreement is attached hereto as Attachment A.
4. In July 2003, I executed an agreement entitled Mandate Agreement that granted IPG the right to file a claim for cable and satellite royalties for calendar year 2002. A true and correct copy of the agreement is attached hereto as Attachment B.

5. In July 2004, I executed an agreement entitled Mandate Agreement that granted IPG the right to file a claim for cable and satellite royalties for calendar year 2003. A true and correct copy of the agreement is attached hereto as Attachment C.
6. In February 2005, I executed an agreement entitled Secondary Rights Agreement that granted All Global Media (“AGM”) the right to file claims for cable and satellite royalties. The agreement was for a minimum of one year and was terminated December 30, 2012. A true and correct copy of the agreement is attached hereto as Attachment D.
7. In January 2013, I learned that PBS had distributed \$19,503.66 in 2008 public television, cable retransmission royalties to Worldwide Subside Group (“WSG”), another name for IPG. I then wrote Brian Boydston, counsel for WSG, stating BRI’s agreements with WSG had terminated and WSG had no right to make such claims. I told WSG to withdraw all unauthorized claims, to provide me an accounting of all claims WSG made, and a full payment of the funds WSG had received. A true and correct copy of my letter to Mr. Boydston is attached hereto as Attachment E.
8. By email dated March 12, 2013, WSG responded that they were investigating my position. A true and correct copy of the WSG email that I received is attached hereto as Attachment F.
9. By emails dated March 13, 2013, my counsel, Edward (Ted) Hammerman, wrote Mr. Boydston reiterating BRI’s position that the WSG claim was unauthorized and asking for remission of the \$19,503.66. True and correct copies of Mr. Hammerman’s emails are attached hereto as Attachment G.

10. By letter dated April 1, 2013, Denise Vernon sent BRI an accounting and a check in the sum of \$15,602.00. A true and correct copy of that correspondence and check is attached hereto as Attachment H.
11. By letter of counsel, Mr. Hammerman, dated April 10, 2013, the partial payment was returned to Mr. Boydston and demand for the full amount made. The letter also rejects the implication that by accepting the check, BRI is authorizing WSG to file claims on its behalf. A true and correct copy of that correspondence is attached hereto as Attachment I.
12. By emails dated June 14, 2013 and October 9, 2013, Mr. Hammerman continued to correspond with WSG. However, not having received any response after returning the check in April 2013, and in utter frustration after more than eight months of inaction, but seeking to settle the matter, I asked Mr. Hammerman to offer a settlement that would reduce BRI's payment to \$17,552.50. Even though I do not believe WSG was entitled to anything, and it had wrongly appropriated BRI's money, I believed such offer could break the impasse caused by WSG. A true and correct copy of the set of Mr. Hammerman's three emails is attached hereto as Attachment J.
13. Despite WSG having falsely filed copyright royalty claims for BRI and having improperly received BRI's royalty payment from PBS, WSG has made no final accounting to BRI. Since April 2013, BRI has not received any further communication or payment from WSG.

I declare the following to be true and correct under penalty of perjury.

Dated: October 9, 2014


Walter J. Kowalski

ATTACHMENT A

INDEPENDENT PRODUCERS GROUP

2318 Sawgrass Ridge
San Antonio, Texas 78258
(830) 438-8881 (phone)
(830) 438-8882 (fax)
www.independentproducers.org

August 23, 2002

Walter Kowalski
Bob Ross, Inc.
P.O. Box 946
Sterling, Virginia 20167

Re: 2001 Cable and Satellite Retransmission Royalties

Dear Walter:

Thank you for your affiliation with Independent Producers Group in connection with your application for 2001 Cable and Satellite Retransmission Royalties. For your records, enclosed herein please find a copy of the fully-executed Representation Agreement.

In the foreseeable future we shall forward to you an electronic disc containing a list of titles for which 2001 cable and/or satellite royalties are due. This list is currently available at our website, www.independentproducers.org, however the disc will likely be more easily maneuvered through.

If you have any questions about the foregoing, please feel free to contact our office.

Sincerely,



Marian Oshita
President

MANDATE AGREEMENT

The undersigned claimant hereby grants and assigns Independent Producers Group ("IPG") the exclusive right to apply for and collect on behalf of the undersigned (and all beneficial and/or legal owners of copyright identified on the attached Exhibit "A", collectively, the "Claimants") all monies distributed by the United States Copyright Office and the Copyright Arbitration Royalty Panel ("CARP") attributable to 2001 cable and satellite retransmission royalties distributed pursuant to 17 U.S.C. Sections 111 and 119, under the following terms and conditions:

1. The undersigned agrees, on behalf of itself and all beneficial and/or legal owners of copyright identified on the attached Exhibit "A", to accept the distribution methodology published at the IPG web site "www.independentproducers.org", hereby incorporated by reference.
2. Promptly upon IPG's request therefor, the Claimants shall provide IPG with an alphabetical list of program titles owned or distributed by the Claimants for which the Claimants retain the right to collect cable and satellite retransmission royalties.
3. IPG shall be entitled to establish all necessary and reasonable procedures required in order to accurately distribute retransmission royalties to the appropriate claimants.
4. IPG, its officers, agents or employees shall not be liable to the Claimants or to any person, firm or corporation for any act or omission in the prosecution of Claimants' claims.
5. The undersigned warrants that the undersigned retains the exclusive right to enter into this agreement and to apply for and collect cable and satellite retransmission royalties, as applicable, on behalf of the Claimants for the program titles provided to IPG.
6. In the event that the Claimants and another party make claim to the same program title, IPG will have no obligation to resolve such dispute, and shall be entitled to escrow funds attributable to the disputed program title until IPG is provided notification from the competing claimants of their resolution of such dispute, or until IPG is provided a ruling from a court of competent jurisdiction.
7. Any interpretation of this Agreement shall be governed by California law, subject to the exclusive personal and subject matter jurisdiction of state and federal courts located in Los Angeles County, California.
8. The undersigned, on behalf of itself and the Claimants, agrees to provide IPG all documentation necessary to substantiate the Claimants' right to collect retransmission royalties for program titles submitted by to IPG. All program title claims made by the Claimants shall be subject to IPG's good faith confirmation of the Claimants' entitlement thereto.

AGREED AND ACCEPTED:

Bob Ross, Inc.

Independent Producers Group

By: By: 

An Authorized Signatory

Typed/Printed Name: WALTER J. KOWALSKITitle: PRESIDENTDate: 30 July 2002

ATTACHMENT B

INDEPENDENT PRODUCERS GROUP

July 31, 2003

Mr. Walter J. Kowalski
Bob Ross, Inc.
P.O. Box 946
Sterling, VA 20167

Re: 2002 Cable and Satellite Retransmission Royalties

Dear Mr. Kowalski:

Enclosed please find a fully-executed Mandate for your records.

I also wanted to let you know what is happening with the collections of your retransmission royalties. The first phase has begun for cable royalties for 1998 and 1999. Once this first phase is completed, the earliest completion is October, then the process for distribution of royalties can begin. I will keep you apprised as I become aware of additional information.

Please feel free to contact me with any inquiries.

Sincerely,



Marian Oshita

Enclosure

9903 Santa Monica Blvd., #655
Beverly Hills, CA 90212
310-908-5277/310-372-1970
310-372-1969 fax moshita@bigplanet.com

MANDATE AGREEMENT

The undersigned claimant hereby grants and assigns Independent Producers Group (IPG) the exclusive right to apply for and collect on behalf of the undersigned all monies distributed by the United States Copyright Office and the Copyright Arbitration Royalty Panel (CARP) attributable to 2002 cable and satellite retransmission royalties distributed pursuant to 17 U.S.C. Sections 111 and 119, under the following terms and conditions:

1. The undersigned agrees to accept the distribution methodology published at the IPG web site www.independentproducers.org, hereby incorporated by reference.
2. Promptly upon IPG's request therefor, the undersigned shall provide IPG with an alphabetical list of program titles owned or distributed by the undersigned for which the undersigned retains the right to collect cable and satellite retransmission royalties.
3. IPG shall be entitled to establish all necessary and reasonable procedures required in order to accurately distribute retransmission royalties to the appropriate claimants.
4. IPG, its officers, agents or employees shall not be liable to the undersigned or to any person, firm or corporation for any act or omission in the prosecution of undersigned's claims.
5. The undersigned warrants that to the best of undersigned's knowledge, the undersigned retains the exclusive right to apply for and collect cable and satellite retransmission royalties, as applicable, for the program titles provided by the undersigned to IPG.
6. In the event that the undersigned and another party make claim to the same program title, IPG will have no obligation to resolve such dispute, and shall be entitled to escrow funds attributable to the disputed program title until IPG is provided notification from the competing claimants of their resolution of such dispute, or until IPG is provided a ruling from a court of competent jurisdiction.
7. Any interpretation of this Agreement shall be governed by California law, subject to the exclusive personal and subject matter jurisdiction of state and federal courts located in Los Angeles County, California.
8. The undersigned agrees to provide IPG all documentation necessary to substantiate the undersigned's right to collect retransmission royalties for program titles submitted by the undersigned. All program title claims made by the undersigned shall be subject to IPG's good faith confirmation of the undersigned's entitlement thereto.

AGREED AND ACCEPTED: CLAIMANT

Company Name: Bob Ross, Inc.
 By: Walter J. Kuwalski
 Typed/Printed Name: WALTER J. KUWALSKI
 Title: PAVE
 Date: 16 July, 2003

INDEPENDENT PRODUCERS GROUP

By: [Signature]
 An Authorized Signatory

ATTACHMENT C

INDEPENDENT PRODUCERS GROUP

July 31, 2004

Mr. Walter J. Kowalski
Bob Ross, Inc.
P.O. Box 946
Sterling, VA 20167

Re: 2003 Cable and Satellite Retransmission Royalties

Dear Mr. Kowalski:

Enclosed please find a fully-executed Mandate for your records.

Please feel free to contact me with any inquiries.

Sincerely,



Marian Oshita

Enclosure

9903 Santa Monica Blvd., #655
Beverly Hills, CA 90212
310-908-5277/310-372-1970
310-372-1969 fax moshita@bigplanet.com

MANDATE AGREEMENT

The undersigned claimant hereby grants and assigns Independent Producers Group (IPG) the exclusive right to apply for and collect on behalf of the undersigned all monies distributed by the United States Copyright Office and the Copyright Arbitration Royalty Panel (CARP) attributable to 2003 cable and satellite retransmission royalties distributed pursuant to 17 U.S.C. Sections 111 and 119, under the following terms and conditions:

1. The undersigned agrees to accept the distribution methodology published at the IPG web site www.independentproducers.org, hereby incorporated by reference.
2. Promptly upon IPG's request therefor, the undersigned shall provide IPG with an alphabetical list of program titles owned or distributed by the undersigned for which the undersigned retains the right to collect cable and satellite retransmission royalties.
3. IPG shall be entitled to establish all necessary and reasonable procedures required in order to accurately distribute retransmission royalties to the appropriate claimants.
4. IPG, its officers, agents or employees shall not be liable to the undersigned or to any person, firm or corporation for any act or omission in the prosecution of undersigned's claims.
5. The undersigned warrants that to the best of undersigned's knowledge, the undersigned retains the exclusive right to apply for and collect cable and satellite retransmission royalties, as applicable, for the program titles provided by the undersigned to IPG.
6. In the event that the undersigned and another party make claim to the same program title, IPG will have no obligation to resolve such dispute, and shall be entitled to escrow funds attributable to the disputed program title until IPG is provided notification from the competing claimants of their resolution of such dispute, or until IPG is provided a ruling from a court of competent jurisdiction.
7. Any interpretation of this Agreement shall be governed by California law, subject to the exclusive personal and subject matter jurisdiction of state and federal courts located in Los Angeles County, California.
8. The undersigned agrees to provide IPG all documentation necessary to substantiate the undersigned's right to collect retransmission royalties for program titles submitted by the undersigned. All program title claims made by the undersigned shall be subject to IPG's good faith confirmation of the undersigned's entitlement thereto.

AGREED AND ACCEPTED: CLAIMANT

Company Name: Bob Ross, Inc.
By: Walter J. Kowalski
Typed/Printed Name: WALTER J. KOWALSKI
Title: PRES
Date: 15 July 04

INDEPENDENT PRODUCERS GROUP

By: [Signature]
An Authorized Signatory

ATTACHMENT D

Marian Oshita
 8903 Santa Monica Blvd., #055
 Beverly Hills, CA 90212
 (310) 908-5277
 (310) 372-1989 (fax)
 e-mail: moshita@bigplanet.com

*Joan,
 try faxing
 the attached
 in a day or so.
 JH
 faxed
 2-17-05
 JK*

Fax

| | | | |
|---------------|-------------------------------|---------------|------------------------|
| To: | Walter Kowalski/Bob Ross Inc. | From: | Marian Oshita |
| Fax: | 703-803-9793 | Pages: | 3 including cover page |
| Phone: | 703-803-7200 | Date: | February 14, 2005 |
| Re: | Retransmission Royalties | CC: | |

☐ Urgent ☐ For Review ☐ Please Comment ☐ Please Reply ☐ Please Recycle

• **Comments:**

Walter,

I hope this finds you well. Attached is a new agreement for representation of your secondary rights. Please sign where indicated and return to me via fax. Upon receipt, I will provide you a fully-executed agreement.

Thank you in advance for your prompt attention to this matter. Please feel free to contact me with any questions.

Best, Marian

*Marian,
 We have not received
 a countersigned copy
 from you.
 JH Kowalski*

This FAX is intended only for the use of the individual or entity to which it is addressed, and may contain information that is privileged, confidential and exempt from disclosure under applicable law. If you are not the intended recipient, any dissemination, distribution or copying of this communication is strictly prohibited. If you have received this communication in error, please notify us immediately by telephone and return the original FAX to us at the above address by US Postal Service. Thank you.

SECONDARY RIGHTS AGREEMENT

THIS AGREEMENT is made the 12th day of February, 2006 BETWEEN:

ALL GLOBAL MEDIA, _____ ("AGM") and

BOB ROSS, INC., P.O. Box 946, Sterling, VA 20167, ("Company")

This agreement will confirm the basic terms of agreement between AGM and Company regarding the exclusive assignment of certain rights in the Programs (as hereinafter defined).

NOW IS AGREED as follows:

1. ASSIGNMENT

(a) The Company hereby grants and assigns to AGM the right to administer, which includes the application and collection, of royalties distributed by collection societies throughout the world for all program works owned or distributed by the Company, including but not limited to the attached list of Programs (Schedule 'A'). The royalties specified include but are not limited to, rental rights; educational levies; private copyright levies; and cable and satellite retransmission royalties (in the United States pursuant to 17 U.S.C. Sections 111 and 119).

(b) The term of the Agreement is a minimum period of one (1) year commencing on the date hereof and shall continue until written termination notice is provided which shall be six months prior to the termination date. Company shall be entitled to all royalties due on the Programs during the term, regardless of when paid and any royalties due prior to the term but not yet collected.

(c) Company has prior filings including but not limited with the U.S. Copyright Office, which were filed as part of a Joint filing. Company hereby appoints AGM as its new agent effective immediately to administer those prior and any other filings with regard to the Company.

2. FINANCIAL TERMS

(a) In consideration of the above assignment of rights, AGM shall pay to Company eighty-five percent (85%) of all proceeds actually received by AGM, which are directly attributable to Company Programs.

(b) If AGM receives royalties by check made payable directly to Company, Company hereby grants AGM the non-exclusive and limited authority to endorse and deposit such check into AGM's account.

(c) AGM shall keep full and proper books of account regarding the exploitation of its rights under this Agreement and Company, or a duly authorized person or firm acting on behalf of Company, shall have the right (not more than once in any eighteen (18) month period) with advanced notice of not less than fourteen business days and during normal

WJH

business hours to inspect such books or records of the Company one (1) year prior to the commencement of the audit. Any such inspection shall be at Company's sole cost and expense.

(d) If the audit discloses a deficiency between the amount found to be due to Company and the amount actually received or credited to Company then AGM shall, upon Company's written demand, promptly pay the deficiency, together with interest thereon at the then current prime rate from the date such amount became due until the date of payment.

3. REPRESENTATION AND WARRANTIES

(a) Company warrants that it has the exclusive right to the Programs to enter into this Agreement and to grant and assign the right to administer herein to AGM.

(b) AGM represents and warrants to Company that it has the full power and ability to enter into and duly perform this Agreement and that it will not exercise any of the copyrights or other rights in the works other than has been authorized under this Agreement. AGM makes no representation as to the existence or amount of royalties to be received for Company.

(c) Company indemnifies AGM and holds AGM, its officers, agents and/or affiliates fully harmless from any claim by any third parties with respect to the right to administer royalties herein.

(d) The warranties and indemnities of each party shall survive the termination of this Agreement.

4. MISCELLANEOUS

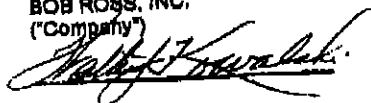
(a) Any dispute arising out of this Agreement shall be governed by and subject to the laws of California.

(b) Company and AGM agree that the parties shall not reveal the terms of this Agreement to any third party unless required to do by the authority of a court of competent jurisdiction. Additionally, AGM agrees to keep all program information provided by Company confidential from any third party not engaged by AGM.

(c) Notices shall be in writing to the addressee indicated above.

Please confirm your acceptance and agreement to the foregoing by signing where indicated below.

SIGNED BY
for and on behalf of
BOB ROSS, INC.
("Company")



SIGNED BY
for and on behalf of
ALL GLOBAL MEDIA
("AGM")



ATTACHMENT E



Bob Ross[®] Inc.

Post Office Box 946 • Sterling, Virginia 20167 • USA

• Phone: (703) 803-7200 • Fax: (703) 803-8793 • Email: walt@bobross.com •

January 16, 2013

Via Facsimile: 213-624-9073
and
UPS Red Letter: 1Z2938690154975166

Mr. Brian Boydston
Counsel for Worldwide Subsidy Group, LLC
c/o Pick & Boydston, LLP
10786 Le Conte Avenue
Los Angeles, CA 90024

*Re: Accounting for Bob Ross Inc.
Services Terminated
Payment Due: \$19,503.66*

Dear Mr. Boydston:

We learned recently that PBS distributed \$19,503.66 in 2008 public television, cable retransmission royalties owed to our corporation, Bob Ross Inc. ("BRI"), to your client, Worldwide Subsidy Group, LLC ("WSG"), between October and December 2012. No contract exists currently between BRI and WSG. WSG's last agreement with BRI terminated after royalties for 2003 were distributed. WSG is not authorized to claim BRI's royalties.

WSG or its affiliates or agents are not authorized to claim to represent, to represent, or to file any future claims for BRI in any domestic or international matters. Please instruct your client to withdraw all pending claims on BRI's behalf for all years in which royalties remain undistributed.

Additionally, please provide me with copies and an accounting of all claims filed on behalf of all of BRI's programming from any and all royalties collected worldwide since 2004. In addition, we request that your client immediately notify all entities with whom WSG filed or otherwise provided royalty claims that you no longer represent BRI.

Finally, please instruct WSG to remit the \$19,503.66 it collected for BRI's programming without BRI's authorization. Payment may be sent to me at the address on this stationery. We appreciate your cooperation.

Sincerely,

Walter J. Kowalski
President

cc: Steven Edw. Friedman
Marc Mangum, Esq.

ATTACHMENT F

From: worldwidesg@aol.com
To: waltatbri@aol.com
CC: brianb@ix.netcom.com, sfriedman@pbs.org, mmangum@pbs.org
Sent: 3/12/2013 10:56:03 P.M. Eastern Daylight Time
Subj: WSG -w- Bob Ross, Inc.; 2008 cable royalties

Dear Mr. Kowalski,

we have been informed that you have engaged legal counsel to represent you in connection with the issue of whether WSG was entitled to make claim for and collect royalties attributable to 2008 retransmission royalties, and have now taken the position that WSG had no entitlement to collect royalties post-2003. Among other reasons, in light of the fact that WSG has collected and accounted to Bob Ross, Inc. on several occasions for royalties attributable to 2004-2007, to which no issue or objection was ever previously raised, this position has come as a surprise to us. We have also been informed that Bob Ross, Inc. is nevertheless refusing to provide the requested documents to support its position that a superior claim rests with third parties or Bob Ross, Inc., or even indicate whether claims were made by Bob Ross, Inc. (or on its behalf) independent of the claims filed by WSG.

The response of Bob Ross, Inc. is unfortunate, and requires WSG to perform various due diligence that would have been much easier if Bob Ross, Inc. were to have simply cooperated. In fact, WSG will now need to obtain documents from the U.S. Copyright Office in order to determine the appropriate course of action. In all candor, we are perplexed at this sudden adversarial posture which, in its absence, would have resulted in the immediate accounting to Bob Ross, Inc. of the \$19,503 most recently collected, less WSG's entitlement to retain \$3,901, i.e., hardly a significant amount.

In any event, WSG will now have to investigate this matter further. Once WSG concludes its inquiry, it will act accordingly. If you elect to change your mind, please feel free to contact me.

Denise Vernon
Worldwide Subsidy Group LLC

ATTACHMENT G

From: Ted Hammerman <ted@copyrightroyalties.com>

Subject: Fwd: Unauthorized 2008 Cable Retransmission Royalty Claims filed by WSG

Date: March 13, 2013 2:45:02 PM EDT

To: Brian Boydston <bdb@pickboydston.com>

Mr. Boydston:

Upon review of my request below, I wish to change it. Please remit the refund the \$19,503.66 WSG collected without authorization to PBS or remit to BRI directly.

Thank you.

Ted Hammerman

Begin forwarded message:

From: Ted Hammerman <ted@copyrightroyalties.com>

Subject: Unauthorized 2008 Cable Retransmission Royalty Claims filed by WSG

Date: March 13, 2013 1:07:08 PM EDT

To: Brian Boydston <bdb@pickboydston.com>

Mr. Boydston:

Please advise your client, Worldwide Subsidy Group ("WSG") to terminate all communications with my client, Bob Ross, Inc. ("BRI"). BRI has retained counsel in this matter and does not wish to communicate with Raul Galaz, or others from WSG. Kindly direct all future correspondence to this firm.

Your client's statements below fail to address the fact that, according to BRI, WSG was never authorized to claim BRI's royalties from 2004 forward. Proof of authorization will not be found at the Copyright Office.

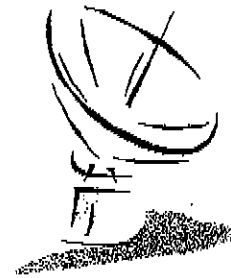
We look forward to your client's prompt confirmation that it was not authorized to claim BRI's royalties. Then, please remit the \$19,503.66 WSG collected without authorization to my firm.

Thank you for your continued cooperation.

Ted Hammerman

ATTACHMENT H

April 1, 2013



Worldwide Subsidy Group

Bob Ross, Inc.
P.O. Box 946
Sterling, VA 20167
Attn: Walter Kowalski

Re: Royalty Payments

Dear Sir/Madam:

Worldwide Subsidy Group is pleased to provide you with a royalty check for monies we have collected on your behalf for your programs. We are also providing you with a royalty statement which sets forth the amounts we received and the total due to you.

We look forward to our association and collecting re-broadcast royalties on your behalf. Please feel free to contact me with any questions you may have.


Cordially,

A handwritten signature in cursive script, appearing to read "Denise Vernon".

Denise Vernon
Worldwide Subsidy Group

Encls. Royalty Statement
Royalty Check

2667 Rim Oak, San Antonio, Texas 78232
Phone: (210) 789-9084 (cell) email: worldwidesg@aol.com

| | | | | | | |
|---|-----------------------------|--|----------------|------------------------|-----------------------|--|
|  | | | | | | |
| Worldwide Subsidy Group | | | | | | |
| April 1, 2013 | | | | | | |
| Payee: Bob Ross, Inc. | | | | | | |
| Royalties: U.S. Public Television | | | | | | |
| | | | | | | |
| DISTRIBUTION | TITLE | AMOUNT RECEIVED (U.S. \$) | PAYEE | PAYEE SHARE | AMOUNT DUE | |
| 2008 Cable | Best of the Joy of Painting | \$19,503 | Bob Ross, Inc. | | | |
| | | \$19,503 | | 0.80 | \$15,602 | |

WORLDWIDE SUBSIDY GROUP, LLC
2667 RIM OAK (210) 789-9084
SAN ANTONIO, TX 78232

Bank of America
ACH R/T 111000025

1597

35-2/120 TX
2743

4/1/2013

PAY TO THE
ORDER OF Bob Ross Inc.

\$ **15,602.00

Fifteen Thousand Six Hundred Two Only*****

DOLLARS

Bob Ross, Inc.
P.O. Box 946
Sterling, VA 20167

MEMO

U.S. Public Television

Daniel A. Verna
AUTHORIZED SIGNATURE

⑈001597⑈ ⑆113000023⑆ 005860673436⑈

WORLDWIDE SUBSIDY GROUP, LLC

1597

Bob Ross Inc.
WSG:Royalties Paid

4/1/2013

15,602.00

Bank of America

U.S. Public Television

15,602.00

WORLDWIDE SUBSIDY GROUP, LLC

1597

Bob Ross Inc.
WSG:Royalties Paid

4/1/2013

15,602.00

Bank of America

U.S. Public Television

15,602.00

ATTACHMENT I



Edward S. Hammerman, Esq.
Managing Member
T 202.686.2887 | F 202.318.5633
ted@copyrightroyalties.com

April 10, 2013

VIA FEDEX OVERNIGHT DELIVERY: 7994 8773 8776

Brian Boydston, Esq.
Pick & Boydston, LLP
10786 Le Conte Avenue
Los Angeles, CA 90024

**RE: Unauthorized Retransmission Royalty Claims Filed by Worldwide Subsidy Group
2008 US Cable Retransmission Royalties for Bob Ross, Inc.**

Dear Mr. Boydston:

My firm represents Bob Ross, Inc. ("BRI"). On April 4, 2013, BRI received the enclosed letter, "royalty statement" and check in the amount of \$15,602.00 from "Denise Vernon" of Worldwide Subsidy Group ("WSG") related to 2008 U.S. Cable Retransmission Royalties paid by PBS in 2012. Enclosed is the original check (Bank of America Check No. 1597) WSG attempted to pay BRI. Despite the fact that WSG took over four months to issue BRI payment in the wrong amount, BRI rejects and must return WSG's partial payment.

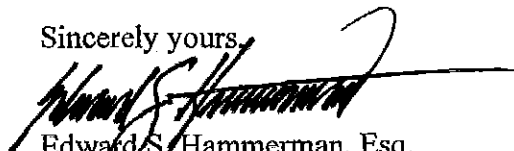
As you and your clients have been made well aware by BRI and this firm, WSG's contracts with BRI terminated in 2003. Claims filed after 2003 by WSG are unauthorized. See attached letter dated January 16, 2013, and emails dated March 12-13, 2013. Based on your relationship with WSG, please take notice of these facts.

BRI rejects WSG's attempt to charge BRI a \$3,901.00 fee for royalties PBS inadvertently paid to WSG. BRI also rejects any attempts by WSG to create any type of accord and satisfaction by WSG's cover letter language that states, "We look forward to our association and collecting re-broadcast royalties on your behalf." Your client has no association with BRI at this time, and knows or at least should know that the royalties at issue are not "re-broadcast royalties". Your client also knows that it was not authorized since 2003 to file claims on behalf of BRI, but continues to do so.

My client rejects WSG's check for less than the full amount due and demands to be paid \$19,503.00. BRI demands that WSG remit the full amount of \$19,503 to BRI or to PBS immediately, and notify all entities in which WSG has previously filed claims for BRI since 2003, that WSG is no longer authorized to represent BRI's interests.

Your continued cooperation is appreciated.

Sincerely yours,



Edward S. Hammerman, Esq.
Attorney for Bob Ross, Inc.

Letter to Brian Boydston
April 10, 2013
Page 2

Attachments

cc: Walter Kowalski
Steve Friedman
Marc Mangum

WORLDWIDE SUBSIDY GROUP, LLC
2667 RIM OAK (210) 789-9084
SAN ANTONIO, TX 78232

Bank of America
ACH R/T 111000026

1597
35-2/1130 TX
2744

4/1/2013

PAY TO THE ORDER OF Bob Ross Inc.

\$ **15,602.00

Fifteen Thousand Six Hundred Two Only*****

DOLLARS

Bob Ross, Inc.
P.O. Box 946
Sterling, VA 20167

MEMO

U.S. Public Television

Denise A. Vernon
AUTHORIZED SIGNATURE

⑈001597⑈ ⑆113000023⑆ 005860673436⑈

WORLDWIDE SUBSIDY GROUP, LLC

1597

Bob Ross Inc.
WSG:Royalties Paid

4/1/2013

15,602.00

Bank of America

U.S. Public Television

15,602.00

WORLDWIDE SUBSIDY GROUP, LLC

1597

Bob Ross Inc.
WSG:Royalties Paid

4/1/2013

15,602.00

Bank of America

U.S. Public Television

15,602.00

IMPORTANT!
The Colorado Black Forest Fire is causing delays and disruptions. [Learn More](#)



799487738776

Ship (PAU) date :
Wed 4/10/2013 8:12 pm
WASHINGTON, DC US



Delivered
Signed for by: R.BOYSTEN

Actual delivery :
Thur 4/11/2013 9:25 am
LOS ANGELES, CA US

Let us tell you when your shipment arrives. [Sign up for delivery notifications >](#)

Travel History

| ▲Date/Time | Activity | Location |
|-------------------------|---|----------------------|
| - 4/11/2013 - Thursday | | |
| 9:25 am | Delivered | LOS ANGELES, CA |
| 9:21 am | Delivery exception Customer not available or business closed | ① MARINA DEL REY, CA |
| 7:52 am | On FedEx vehicle for delivery | MARINA DEL REY, CA |
| 7:19 am | At local FedEx facility | MARINA DEL REY, CA |
| 6:07 am | At destination sort facility | LOS ANGELES, CA |
| 4:19 am | Departed FedEx location | MEMPHIS, TN |
| 12:33 am | Arrived at FedEx location | MEMPHIS, TN |
| - 4/10/2013 - Wednesday | | |
| 9:32 pm | Left FedEx origin facility | WASHINGTON, DC |
| 8:12 pm | Picked up | WASHINGTON, DC |
| 8:51 am | Shipment information sent to FedEx | |

Local Scan Time

Shipment Facts

| | | | |
|-----------------------|-------------------|--------------------------|--|
| Tracking number | 799487738776 | Service | FedEx Standard Overnight |
| Door tag number | DT103393766310 | Weight | 0.5 lbs |
| Delivered To | Residence | Total pieces | 1 |
| Total shipment weight | 0.5 lbs / 0.2 kgs | Shipper reference | BRI |
| Packaging | FedEx Envelope | Special handling section | Deliver Weekday, Residential Delivery |

ATTACHMENT J

From: Ted Hammerman <ted@copyrightroyalties.com>
Subject: Fwd: Unauthorized 2008 Retransmission Royalty Claims Filed by
Worldwide Subsidy Group f/b/o Bob Ross, Inc.
Date: December 5, 2013 at 3:58:46 PM EST
To: Brian Boydston <bdb@pickboydston.com>, "brianb@ix.netcom.com Boydston"
<brianb@ix.netcom.com>
Cc: "WaltatBRI@aol.com Kowalski" <WaltatBRI@aol.com>, Joan Kowalski
<joan@bobross.com>

Dear Mr. Boydston:

It has now been nearly eight months since you received our letter to you dated, April 10, 2013, on behalf of Bob Ross, Inc. ("BRI") to which neither you nor your client have replied. Another copy of the April 10, 2013, letter is attached. In an effort to resolve this matter, where your client, Worldwide Subsidy Group ("WSG"), claimed 2008 cable retransmission royalties without BRI's authorization, and then collected those royalties via PBS' distribution in 2012, my client has now advised me to offer to split the difference between the 20% commission WSG attempted to pay itself April 1, 2013 in the amount of \$3,901, and the full \$19,503 in royalties attributable to BRI's 2008 public television cable retransmission royalties.

As you aware, my client continues to assert that your client was never authorized to collect these royalties, and PBS paid BRI's royalties to WSG in reliance of WSG's unauthorized claim. In an effort to settle this matter, my client is willing to accept payment in the amount of \$17,552.50, as full and final settlement.

We look forward to your reply and with hope to resolve this matter prior to year's end. Your cooperation and substantive reply would be appreciated.

Sincerely,
Ted Hammerman

Begin forwarded message:

From: Ted Hammerman <ted@copyrightroyalties.com>

Subject: Fwd: Unauthorized 2008 Retransmission Royalty Claims
Filed by Worldwide Subsidy Group f/b/o Bob Ross, Inc.

Date: October 9, 2013 7:38:06 PM EDT

To: Brian Boydston <bdb@pickboydston.com>, "Brian D. Boydston, Esq."
<brianb@ix.netcom.com>

Cc: Joan Kowalski <joan@bobross.com>, Walter Kowalski
<WaltatBRI@aol.com>

Dear Mr. Boydston:

It's been six months since our letter to you dated April 10, 2013, on behalf of Bob Ross, Inc. ("BRI") was delivered to your address, and four months since we sent our last email to you regarding this matter. A copy of the April 10, 2013, letter is attached.

My client reiterates its demands (1) to be paid the full amount of royalties your client, Worldwide Subsidy Group, claimed without authorization; (2) for WSG to remit the full amount of \$19,503.00 to BRI or to PBS immediately; and (3) notify all entities with whom WSG has previously filed claims for BRI since 2003, that WSG is no longer authorized to represent BRI's interests.

Your cooperation and substantive reply would be appreciated.

Sincerely,
Ted Hammerman

Begin forwarded message:

From: Ted Hammerman <ted@copyrightroyalties.com>

Subject: Unauthorized 2008 Retransmission Royalty Claims
Filed by Worldwide Subsidy Group f/b/o Bob Ross, Inc.

Date: June 14, 2013 10:37:00 AM EDT

To: Brian Boydston <bdb@pickboydston.com>

Cc: Joan Kowalski <joan@bobross.com>, Walter Kowalski
<WaltatBRI@aol.com>

Dear Mr. Boydston:

It's been over two months since our letter to you dated April 10, 2013, on behalf of Bob Ross, Inc. ("BRI") was delivered to you address. A copy of that letter is attached.

My client reiterates its demands (1) to be paid the full amount of

royalties your client, Worldwide Subsidy Group, claimed without authorization; (2) for WSG to remit the full amount of \$19,503.00 to BRI or to PBS immediately; and (3) notify all entities with whom WSG has previously filed claims for BRI since 2003, that WSG is no longer authorized to represent BRI's interests.

Your cooperation is appreciated.

Sincerely,
Ted Hammerman

1

Before the
COPYRIGHT ROYALTY JUDGES
Washington, D.C.

IN THE MATTER OF: :
: :
Phase II Distribution :Docket No.
of the 2004-2009 :2012-6
Cable Royalty Funds : :
:CRB CD
:2004-09
:(Phase II)
: :
IN THE MATTER OF: :
: :
Phase II Distribution :Docket No.
of the 1999-2009 :2012-7
Satellite Royalty Funds : :
:CRB SD
:1999-2009
:(Phase II)
: :
: :

Volume 4

Thursday,
December 11, 2014
Room LM-403
Madison Building
Library of Congress
101 Independence Avenue, SE
Washington, DC
The above-entitled matter came on for
hearing, pursuant to notice, at 9:15 a.m.

BEFORE: THE HONORABLE SUZANNE M. BARNETT
THE HONORABLE JESSE FEDER
THE HONORABLE DAVID R. STRICKLER
Copyright Royalty Judges

3

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APPEARANCES:

On Behalf of the Worldwide Subsidy Group,
d/b/a Independent Producers Group:
BRIAN BOYDSTON, ESQ.
Pick & Boydston, LLP
10786 Le Conte Avenue
Los Angeles, CA 90024
(213) 624-1996

On Behalf of the Settling Devotional
Claimants:

MATTHEW J. MacLEAN, ESQ.
CLIFFORD HARRINGTON, ESQ.
VICTORIA N. LYNCH, ESQ.
Pillsbury Winthrop Shaw Pittman
2300 N Street, NW
Washington, DC 20037-1122
(202) 663-8000
ARNOLD P. LUTZKER, ESQ.
BEN STERNBERG, ESQ.
Lutzker & Lutzker, LLP
1233 20th Street, NW
Suite 703
Washington, DC 20036
(202) 408-7600

On Behalf of the Motion Picture Association
of America:

GREGORY O. OLANIRAN, ESQ.
LUCY HOLMES PLOVNICK, ESQ.
WHITNEY NONNETTE, ESQ.
Mitchell Silberberg & Knupp LLP
1818 N Street N.W.
8th Floor
Washington D.C. 20036
(202) 355-7900

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205

1 Broadcasting Phase I Category and there was, at
2 least theoretically, a possibility it might have
3 been broadcast on Canadian Public Television, it
4 wasn't, but there was a possibility, so had it
5 been, that would have program suppliers category,
6 but it has never occurred.

7 So, this has nothing to do with this
8 category. This is no different than if IPG had a
9 dispute with its landlord and the SDC and its
10 efforts went and found the landlord and brought
11 the landlord in to say, IPG, they are fraudulent
12 and they're bad actors because they haven't paid
13 me their rent. It's no different than that
14 because Bob Ross, Inc. has no claims here, has
15 never had any claims in either of these
16 categories and, therefore, it is irrelevant.

17 As to many of the things that were
18 said, I'll have my chance to respond in argument
19 if we go forward on this, but I would just say
20 that the claims of fraud are completely
21 unfounded. This s a dispute that arose, frankly,
22 because Bob Ross, Inc. demanded that IPG hand

206

1 over 100 percent of what IPG collected for this
2 one particular period of 2008.

3 For the years prior, IPG accounted to
4 Bob Ross, Inc. Bob Ross, Inc. took the money
5 happily, never said boo, never said we terminated
6 with you, never said anything about All Global
7 Media.

8 I'd also point out All Global Media
9 has never filed an intent to participate in this
10 proceeding or any others and while it's certainly
11 possible that All Global Media and Bob Ross, Inc.
12 may have signed a contract, we were never privy
13 to it.

14 And year in, year out, we made claims
15 on their behalf and we handed them over their
16 money and they didn't complain.

17 JUDGE BARRETT: The objection's
18 overruled. The SDC has made certain claims and
19 in its case-in-chief, this is one of the pieces
20 of evidence that the SDC is offering in support
21 of those claims.

22 It's subject to cross examination,

207

1 it's subject to rebuttal, it's subject to
2 controversion in whatever form and so, we'll hear
3 from Mr. Kowalski.

4 MR. BOYDSTON: Thank you, Your Honor.

5 MR. MACLEAN: Thank you, Your Honor.

6 The Settling Devotional Claimants call
7 Walter Kowalski.

8 Oh, and, Your Honor, I did offer SDC
9 Exhibit 610 into evidence and I don't believe
10 there was a ruling.

11 JUDGE BARRETT: You did and I don't
12 know that we had a chance to focus on that yet.

13 So, before you sit, please raise your
14 right hand?

15 Do you solemnly swear or affirm that
16 the testimony you give in these proceedings shall
17 be the truth, the whole truth and nothing but the
18 truth?

19 MR. KOWALSKI: I do.

20 JUDGE BARRETT: Please be seated.

21 Any objection to the admission of
22 Exhibit 610?

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1 MR. BOYDSTON: No, Your Honor, no
2 objection.

3 MS. PLOVNICK: No objection.

4 JUDGE BARRETT: 610 is admitted.

5 (Whereupon, the above-referred to
6 document was received into evidence as
7 SDC 610.)

8 MR. MACLEAN: Thank you, Your Honor.

9 WHEREUPON,

10 WALTER KOWALSKI
11 was called as a witness for the Claimant and,
12 having been first duly sworn, assumed the witness
13 stand, was examined and testified as follows:

14 DIRECT EXAMINATION

15 BY MR. MACLEAN:

16 Q Good afternoon, Mr. Kowalski.

17 A Good afternoon.

18 Q As you know, I'm Matthew MacLean, I
19 represent the Settling Devotional Claimants.

20 A Right.

21 Q Could you please, first of all, spell
22 your name and introduce yourself to the Judges?

209

1 A Okay. I'm Walter Kowalski,
2 K-O-W-A-L-S-K-I. I am President of Bob Ross,
3 Incorporated, a company we deal in instruction of
4 painting, a particular technique of painting.
5 We have our own production of TV
6 programs, DVDs, videos. We publish about 40
7 books and we have thousands of instructors who
8 have been certified to teach this particular
9 method of painting here in the U.S. and around
10 the world.
11 Q Thank you, thank you, sir.
12 Have you ever testified in any kind of
13 proceeding before?
14 A No, this is the first time.
15 Q And could you please give the Judges
16 a sense of your professional and educational
17 background prior to becoming associated with Bob
18 Ross, Inc.?
19 A I'm a retired Federal Employee. I was
20 with the CIA for about 30 years and I was also
21 engaging in a couple of other entrepreneurial
22 activities.

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1 I owned and managed the food
2 concessions at a racetrack in Southern Maryland.
3 And then through my wife's exposure to Bob Ross,
4 I became involved in that.
5 Q Can you tell the Judges about how that
6 came about?
7 A We had lost our son in an automobile
8 accident and my wife was quite depressed, but
9 she's the artist in the family. And she was
10 eager for a break loose from that depression and
11 she asked if she could attend a class by this
12 rather obscure artist in Clearwater, Florida.
13 So, I agreed. I took time from work
14 and I did some deep sea fishing while she was
15 attending the class.
16 But each evening she would come out of
17 there and said, you know, there's something going
18 on. There's a rapport that Bob has with his
19 students is something very unique.
20 And so, by the end of the five day
21 course, we approached Bob Ross and my wife said,
22 you know, we've got to do something with you,

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1 would you agree? And Bob was one year away from
2 retiring from the Air Force and so, that was sort
3 of the genesis of the whole thing.
4 It was my wife's own sort of view of
5 this Bob Ross person and who has now become
6 somewhat of a guru or quite a celebrity.
7 Q And about what time was that? When
8 did that happen?
9 A In 1980 roughly we began holding
10 class. Bob Ross, the first activity we engaged
11 in was just managing Bob's teaching activities
12 around the U.S., in different parts of the U.S.
13 I functioned as sort of the advanced
14 man to set up the classes and so we swung the
15 East Coast and back down to Florida again. So,
16 it was a case of demonstrations in the shopping
17 malls and TV ads and so forth.
18 Television itself was not in the
19 picture at that time. So, about 1982, we were
20 duplicating some commercial tapes at a local PBS
21 station in Falls Church and the manager happened
22 by and saw the footage of Bob doing this rather

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1 quick technique of painting and suggested that we
2 should have a TV series. And that was the
3 beginning of that.
4 So, it was 1982, our first offering
5 was -- we reached about 50 stations and then from
6 then on, it sort of exponentially grew until we
7 reached just about 90 percent of all public
8 television channels.
9 Q And were you always the president of
10 Bob Ross, Inc.?
11 A I was always the logistics
12 administrator of this. My wife was the artistic
13 side and closely working with Bob and she was on
14 the road with Bob most of the time.
15 Q Today, who is the owner of Bob Ross,
16 Inc.?
17 A My daughter has inherited it. We've
18 signed all of the ownership to my daughter who's
19 been involved in the company for quite some time.
20 Q Prior to -- and Bob Ross, Inc. has
21 syndicated television programs?
22 A Yes, we refresh those and they've been

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1 sort of restructured and reprogrammed and, you
 2 know, we've been on the air continuously
 3 uninterrupted since 1982 in one form or another.
 4 Q What is the name of the program?
 5 A Currently, it's called the Best of the
 6 Joy of Painting.
 7 Q And what was it before?
 8 A It began as simply The Joy of Painting
 9 with Bob Ross.
 10 Q What's the program about?
 11 A It's art instruction. It teaches you
 12 a very quick method of painting through the use
 13 of particular brushes and pallet knives, et
 14 cetera. And that's the sort of appeal, it's a
 15 quick method. Bob does an entire landscape
 16 painting in 30 minutes on TV, so that's the
 17 excitement begins there.
 18 Q Prior to 2001, or prior to really
 19 2002, for the year 2001, did Bob Ross, Inc. every
 20 make any claims to the copyright office for
 21 copyright royalties?
 22 A Unilaterally?

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1 Q Yes.
 2 A No.
 3 Q And why is that?
 4 A I don't know that we really knew about
 5 it, to be honest. The first time we heard it was
 6 when we were approached by IPG.
 7 Q And so --
 8 A A representative.
 9 Q That was what I was about ask you.
 10 Tell the Judges about that.
 11 A For the claim year 2001, I signed a --
 12 I executed a mandated agreement with Marina
 13 Oshita of IPG.
 14 Q How did that come about?
 15 A Just out of the air. I got a piece of
 16 correspondence in the mail one day and I had my
 17 lawyer review the agreement and he approved.
 18 At that time, I researched to find out
 19 what the royalty was all about and decided to go
 20 ahead.
 21 Q In front of you at the witness stand
 22 there you'll see a binder open to SFC Exhibit

215

1 602. Do you see that?
 2 A 602?
 3 Q It should be already open.
 4 A Oh, okay, yes.
 5 Q If you could flip through and take a
 6 look at that and tell me if you recognize SDC
 7 Exhibit 602?
 8 A Yes.
 9 Q And what is SDC --
 10 A It's my declaration.
 11 Q And then if you turn to Attachment --
 12 there are attachments to this declaration, turn
 13 to Attachment A of SDC Exhibit 602.
 14 A Right.
 15 Q Can you take a look at that, it's a
 16 two page document, could you take a look at that
 17 and tell us what that is?
 18 A That was the -- there's the cover
 19 letter transmitting the mandate agreement for the
 20 cable year 2001.
 21 Q And taking a look at the bottom of the
 22 mandate agreement under the line Bob Ross, Inc.

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1 agreed and accepted Bob Ross, Inc. Is that your
 2 signature there?
 3 A It is, yes.
 4 Q So, you signed this mandate agreement
 5 with IPG for the year 2001, is that right?
 6 A Right, I did.
 7 Q What did you understand you were doing
 8 when you signed this mandate agreement?
 9 A I was just giving IPG the right to
 10 collect the royal monies on by behalf for the
 11 year 2001.
 12 Q After signing this mandate agreement,
 13 did you -- well, let me ask you this. What did
 14 you -- after signing the mandate agreement, what
 15 did you understand was to happen?
 16 A I understood that it would be a number
 17 of years forthcoming before any monies would be
 18 collected. So, I signed it and really just sort
 19 of waited for a number of years before any monies
 20 were produced.
 21 Q Did you have any further
 22 communications with Ms. Oshita after signing this

217

1 initial mandate agreement?

2 A No, I think probably the next one

3 would have been for the year 2002.

4 Q So, taking a look at Attachment B to

5 your declaration, can you look at that

6 attachment? It's another two page document.

7 A Attachment A?

8 JUDGE BARRETT: I think he said B as

9 in boy.

10 MR. KOWALSKI: Oh, B, okay.

11 MR. MACLEAN: And actually, Your

12 Honor, first I'd like to move to admit Attachment

13 A to SDC 602.

14 MR. BOYDSTON: No, objection.

15 JUDGE BARRETT: Attachment A to 602 is

16 admitted.

17 (Whereupon, the above-referred to

18 document was admitted into evidence as

19 SDC 602 Attachment A.)

20 MR. MACLEAN: Mr. Kowalski, if you'd

21 take a look at Attachment B to SDC 602 and tell

22 the Judges what this is?

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1 MR. KOWALSKI: It's a cover letter

2 asking that I sign -- that I execute another

3 mandate agreement for year 2002.

4 BY MR. MACLEAN:

5 Q And did you execute this mandate

6 agreement for year 2002?

7 A I did, yes.

8 Q In between the execution of these two

9 mandate agreements, did you have any meetings or

10 phone conversations or with Marion Oshita?

11 A No, not really.

12 Q So, you just got --

13 A None that I can recall, no.

14 Q So, you just got another letter in the

15 mail asking you to sign the next mandate

16 agreement?

17 A Correct, yes.

18 MR. MACLEAN: If you could turn to

19 Attachments -- oh, and Your Honor, I move to

20 admit Attachment B to SDC 602.

21 MR. BOYDSTON: No objection.

22 JUDGE STRICKLER: That's both the July

219

1 31st letter and the mandate agreement?

2 MR. MACLEAN: Yes, Your Honor.

3 JUDGE BARRETT: No objection from

4 MPAA?

5 MR. OLANIRAN: No objection, Your

6 Honor.

7 JUDGE BARRETT: Attachment B is

8 admitted.

9 (Whereupon, the above-referred to

10 document was admitted into evidence as

11 SDC 602 Attachment B.)

12 MR. MACLEAN: Sir, if you could to

13 Attachment C to SDC 602?

14 MR. KOWALSKI: Yes? Okay.

15 BY MR. MACLEAN:

16 Q Could you tell the Judges what

17 Attachment C is?

18 A It's another cover letter and the

19 attached mandate agreement for year 2003. And

20 that is my signature and I did approve.

21 Q Between your signing the mandate

22 agreement for 2002 and the signing of the mandate

220

1 agreement for 2003, did you have any telephone

2 conversations or meetings with Marion Oshita?

3 A No.

4 Q During this entire time frame in which

5 you signed these three mandate agreements, did

6 you ever have any communications at all with Raul

7 Galaz?

8 A No, it's not a name that was know to

9 me at that time.

10 Q Did you have any communications in

11 that time frame with Denise Vernon?

12 A No.

13 Q Is there a name that was familiar to

14 you?

15 A It's a name that became familiar to me

16 in the latter stages of 2012.

17 Q In the time frame in which these

18 mandate agreements were signed, did you have any

19 communications with Lisa Galaz?

20 A No.

21 Q Is that a name that would have been

22 familiar to you at that time?

221

1 A No.

2 MR. MACLEAN: Your Honor, I move

3 Exhibit C to SDC 602 into evidence.

4 MR. BOYDSTON: No objection.

5 MR. OLANIRAN: No objection.

6 JUDGE BARRETT: Attachment C's

7 admitted.

8 (Whereupon, the above-referred to

9 document was admitted into evidence as

10 SDC 602 Attachment C.)

11 MR. MACLEAN: If you could take a look

12 at Attachment D? Could you tell the Judges what

13 Attachment D is?

14 MR. KOWALSKI: This is a fax cover

15 sending to me this -- a secondary rights

16 agreement to the executed -- and I think I did,

17 and then not having received a copy with Marion

18 Oshita's signature, I did send it back to her

19 asking her to countersign.

20 BY MR. MACLEAN:

21 Q And then this is the reply from Marion

22 Oshita?

222

1 A And this is the reply. I think there

2 was a delay in getting the fax to go. I think

3 the fax number wasn't effective or something.

4 Anyway, it was faxed back to her and

5 then she in turn did return it with her

6 signature.

7 Q And this is that fax that Ms. Oshita

8 returned to you?

9 A Correct.

10 MR. MACLEAN: How did it come about

11 that you signed this --

12 Well, first of all, Your Honor, I move

13 Attachment D to Exhibit SDC 602 into evidence.

14 MR. BOYDSTON: No objection.

15 ME. OLANIRAN: No objection, Your

16 Honor.

17 JUDGE BARRETT: Attachment D is

18 admitted.

19 (Whereupon, the above-referred to

20 document was admitted into evidence as

21 SDC 602 Attachment D.)

22 MR. MACLEAN: How did it come about

223

1 that you signed this secondary rights agreement

2 in Attachment D?

3 MR. KOWALSKI: I think, again, mainly

4 I think I accepted it mainly because the same

5 party involved, Marion Oshita, whom I took to be

6 probably the principle in all of the, you know,

7 in all of the exchanges with me up until now.

8 I assumed that she was the principle

9 party and that she's now offering me an

10 alternative plan for ongoing payment of

11 royalties, collection and payment of royalties

12 with a minimum of one year. I think the contract

13 says that there would be a minimum of at least

14 one year beginning with the year 2004. I don't

15 know if that's in the document or not.

16 But that was my understanding it would

17 be for the beginning year 2004 royalties.

18 Q Did you note at the time you signed

19 the secondary rights agreement that it was of a

20 different form and with a different named entity

21 than the mandate agreements that you've been

22 signing earlier?

224

1 A I did notice that it was All Global

2 Media but I just thought it was another

3 reconstruction of what had been taking -- again,

4 because of the principle involved, Marion Oshita,

5 was making a new offer to me which I agreed to.

6 Q And how did you understand this

7 secondary rights agreement to differ with respect

8 to its terms from the mandate agreements that

9 you'd signed earlier?

10 A Well, the main difference is that it

11 was ongoing and it could be terminated by me at

12 any time. But that it would be ongoing for years

13 2004 thereafter.

14 Q Did you ever sign a continuing or

15 ongoing agreement with IPG?

16 A No.

17 Q After your signing the secondary

18 rights agreement at Attachment D, did you ever

19 sign any further agreements with IPG at all?

20 A No.

21 Q Did there come a time when Bob Ross,

22 Inc. began receiving payments of copyright

225

1 royalties?

2 A I think it would be years around 2005
3 there were some royalties being paid, yes.

4 Q Did you note at the time where those
5 royalties were being paid from?

6 A I'd probably say in retrospect, but at
7 the time, I probably would have just forwarded the
8 check on to my accountant for deposit.

9 I'm not sure I was noting -- well, I
10 know what you're saying, it was coming from
11 Worldwide Subsidy Group and I think my reaction
12 probably was that, well, it's just a mechanism
13 for payment of royalties of some particular
14 account.

15 I had not connected IPG with Worldwide
16 Subsidies up until that time.

17 Q Did you have any understanding who
18 Worldwide Subsidy Group was?

19 A No.

20 Q Did you also receive for some years,
21 checks from All Global Media?

22 A Yes, for the years 2004, 2005 and

226

1 2006. There were royalties received for those
2 years from All Global Media, checks drawn from
3 All Global Media.

4 Q Did you receive any checks from either
5 IPG or Worldwide Subsidy Group for those years
6 2004, 2005 and 2006?

7 A No.

8 Q Did you receive a royalty check for
9 the year 2007?

10 A I'm trying to recall.

11 Q You don't have to guess if you don't
12 know the answer.

13 A Okay. Yes, I think I did, yes. Yes,
14 I think I received for 2007.

15 Q Do you know what entity that check
16 came from?

17 A Yes, I do now. It was from Worldwide
18 Subsidy Group.

19 Q When you received that check, did you
20 know what Worldwide Subsidy Group was?

21 A I'd have to know when that check was
22 received. I'm not -- and I don't recall when it

227

1 was if -- let me answer your question this way.

2 It was about in 2012 that I began to
3 see this as a more curious thing than I had up
4 until now because now, I'm receiving checks with
5 cover letters from Worldwide Subsidy Group for
6 years that I had contracted -- I thought I had
7 contracted with All Global.

8 Q So, so --

9 A So, in about 2012, I started having my
10 own questions, I think. In other words, up until
11 then, I had sort of operated on this presumption
12 that it was Marion Oshita until I signed a new
13 secondary agreement with her, but it was always
14 Marion Oshita.

15 But in those later years, about
16 2011/2012, I began to wonder and thought I should
17 look into this, but I never did.

18 Q Well, did there come a time when you
19 became aware of a distribution having been made
20 for the royalty year 2008?

21 A Can you state that question again?

22 Q Did there come a time when you became

228

1 aware of a distribution by PBS made for royalty
2 year 2008?

3 A I first became aware of the fact that
4 there were some questionable activities relative
5 to the payment of royalties.

6 I first heard about that from my
7 daughter who had attended a PBS event on the West
8 Coast and she came back and said that there were
9 rumblings of this sort that there were
10 irregularities of payment of royalties.

11 And so, it was at that time that I
12 went to PBS and asked about who was entitled to
13 the next payment? And they told me that it was
14 -- had been assigned to Worldwide Subsidy Group.

15 And so that was the first time that I
16 understood that they had directly made the claim
17 for my behalf.

18 Q What did you do after that?

19 A I engaged legal counsel for one.

20 Q If you could take a look at Attachment
21 E to SDC Exhibit 602. Could you tell the Judges
22 what Attachment E is?

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1 A Attachment E, yes. I have it and
2 that's my letter to Mr. Boydston.

3 MR. MACLEAN: Your Honor, I move
4 Attachment E to SDC 602 into evidence.

5 MR. BOYDSTON: No objection.

6 MR. OLANIRAN: No objection, Your
7 Honor.

8 JUDGE BARRETT: Attachment E is
9 admitted. And according to my notes, Mr.
10 MacLean, Attachment F was admitted earlier.

11 (Whereupon, the above-referred to
12 document was admitted into evidence as
13 SDC 602 Attachment E.)

14 MR. MACLEAN: Thank you, Your Honor.
15 And, Your Honor, just to make 100 percent sure,
16 did I move for admission of Attachment D?

17 JUDGE BARRETT: I believe so.

18 MR. MACLEAN: Okay, thank you.

19 So, taking a look at Attachment E,
20 what prompted you or what motivated you to write
21 this letter to Mr. Boydston?

22 MR. KOWALSKI: Well, I had to tell him

230

1 that he wasn't entitled to that withdrawal for
2 those funds. I mean I think what's contained in
3 this letter.

4 BY MR. MACLEAN:

5 Q And why do you say that Worldwide
6 Subsidy Group wasn't entitled to these funds?

7 A We had no agreement with them.

8 Q If you'd take a look at Attachment F
9 of SDC 602 which is already in evidence. Could
10 you tell the Judges what Attachment F is?

11 A It's an email from Worldwide Subsidy
12 Group to me.

13 Q I think earlier you testified that you
14 had not been familiar with the name Denise
15 Vernon?

16 A No, that -- I guess that would have
17 been the first such communication I had from her,
18 yes.

19 Q I'd like you to take at the second
20 paragraph. It says the response of Bob Ross,
21 Inc. is unfortunate and requires WSG to perform
22 various due diligence that would have been much

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1 easier if Bob Ross, Inc. were to have simply
2 cooperated.

3 Did you ever have any understanding
4 what Ms. Vernon was referring to here?

5 A No, I have -- that was very confusing
6 to me. I mean what she meant by having simply
7 cooperated, I don't know under what terms we
8 would have done that.

9 Q In the last sentence of that same
10 paragraph, in all candor, we are perplexed at the
11 sudden adversarial posture which in its absence
12 would have resulted in the immediate accounting
13 to Bob Ross, Inc. of the \$19,503.00 most recently
14 collected, less WSGs entitlement to retain
15 \$3,901.00, i.e., hardly a significant amount.

16 Did you have any understanding what
17 Ms. Vernon meant about WSGs entitlement to retain
18 \$3,901.00?

19 A Well, I know that, I mean she's saying
20 that they were entitled to it, but that's not my
21 understanding because, again, we had no agreement
22 with Worldwide Subsidy Group.

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1 Q The last sentence says, in any event,
2 WSG will now have to investigate this matter
3 further. Once WSG concludes its inquiry, will
4 act accordingly. If you elect to change your
5 mind, please feel free to contact me.

6 Are you aware of any investigation or
7 inquiry that Worldwide Subsidy Group conducted?

8 A No.

9 Q If you'd take a look at Attachment G
10 to SDC 602. What is Attachment G?

11 A Ted Hammerman is the legal counsel
12 that I engaged following our discovery.

13 Q Did --

14 A I'm reading, I'm sorry, I'm reading
15 through it right now.

16 It's a request by Mr. Hammerman for
17 them to return the -- to submit to us the monies
18 they had collected on behalf of Bob Ross,
19 Incorporated.

20 Q The entire amount of the money?

21 A The entire amount, yes.

22 MR. MACLEAN: Your Honor, I move

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1 Attachment G into -- I'm sorry, Attachment F into
 2 evidence. I'm sorry, that was Attachment G. I
 3 move Attachment G into evidence.
 4 MR. BOYDSTON: No objection.
 5 JUDGE BARRETT: Attachment G is
 6 admitted.
 7 (Whereupon, the above-referred to
 8 document was admitted into evidence as
 9 SDC 602 Attachment G.)
 10 MR. MACLEAN: And did IPG or WSG
 11 return the entire \$19,503.66 to Bob Ross, Inc.?
 12 MR. KOWALSKI: No.
 13 BY MR. MACLEAN:
 14 Q If you'd turn to Attachment H. What
 15 is Attachment H?
 16 A It's a letter from Worldwide Subsidy
 17 Group with an attachment outlining the breakdown
 18 of the check that was submitted with that letter
 19 and their withdrawal of commission on it.
 20 Their fee was collected from it and
 21 that was the check that was received was the
 22 balance of the original amount, plus their claim

234

1 for the \$15,602.00. I'm sorry, for their -- I'm
 2 not sure what I'm reading now.
 3 Q Well, that's all right, Attachment H
 4 is three pages.
 5 A Oh, yes, right, right. It would be
 6 the -- that's right. The net amount was
 7 \$15,602.00 on the check.
 8 MR. MACLEAN: Your Honor, I move
 9 Attachment H to SDC 602 into evidence.
 10 MR. BOYDSTON: No objection.
 11 JUDGE BARRETT: Attachment H is
 12 admitted.
 13 (Whereupon, the above-referred to
 14 document was admitted into evidence as
 15 SDC 602 Attachment H.)
 16 MR. MACLEAN: If you'd take a look at
 17 Attachment I to SDC 602.
 18 MR. KOWALSKI: All right.
 19 BY MR. MACLEAN:
 20 Q Could you tell the Judges what
 21 Attachment I is?
 22 A It's a letter from my lawyer, Mr.

235

1 Hammerman, to Brian Boydston.
 2 Q Did you instruct Mr. Hammerman to send
 3 this letter?
 4 A I did.
 5 MR. MACLEAN: Your Honor, I move
 6 Attachment I to SDC 602 into evidence.
 7 MR. BOYDSTON: No objection.
 8 MS. PLOVNICK: No objection.
 9 JUDGE BARRETT: Attachment I is
 10 admitted.
 11 (Whereupon, the above-referred to
 12 document was admitted into evidence as
 13 SDC 602 Attachment I.)
 14 MR. MACLEAN: And what did you
 15 instruct Mr. Hammerman to do with respect to this
 16 letter and the attached check?
 17 MR. KOWALSKI: To return the check
 18 that had been sent to us by Worldwide and asking
 19 that they submit the full amount to us.
 20 BY MR. MACLEAN:
 21 Q And did Bob Ross, Inc. receive the
 22 full amount or any further amount from --

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1 A No, there was no further
 2 acknowledgment of any of this, no.
 3 JUDGE STRICKLER: Before you get to
 4 the next document, Mr. Kowalski, the letter from
 5 Mr. Hammerman has three names, cc'd one, of
 6 course, is yourself. The other is Steve Friedman
 7 and Mark Mangum. Do you see that on page 2 of
 8 Attachment I?
 9 MR. KOWALSKI: Yes, I see that.
 10 JUDGE STRICKLER: Do you know who
 11 Steve Friedman and Mark Mangum are?
 12 MR. KOWALSKI: I know that Steve
 13 Friedman is a PBS official. I'm not sure his
 14 full position, but I think he's involved in the
 15 royalty issues, yes.
 16 JUDGE STRICKLER: Thank you. And Mr.
 17 Mangum?
 18 MR. KOWALSKI: I don't know that name.
 19 JUDGE STRICKLER: Thank you.
 20 MR. KOWALSKI: Okay.
 21 MR. MACLEAN: If you could take a look
 22 at Attachment J to SDC 602.

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1 MR. KOWALSKI: I have it.
 2 BY MR. MACLEAN:
 3 Q What is Attachment J?
 4 A It's a fax from Mr. Hammerman to Brain
 5 Boydston indicating that you've not responded to
 6 our earlier letter and offering a compromise to
 7 sort of resolve this.
 8 I think that we held -- I think we
 9 reserved our rights here, but we indicated that
 10 we would, in the interest of the settlement, to
 11 allow them a 20 percent commission and that the
 12 balance should be sent to us.
 13 Q If you'd take a look at -- that was
 14 the first page of Attachment J, if you'd take a
 15 look at the page behind the first page, the
 16 second page of Attachment J. Tell the Judges
 17 what these are.
 18 A Yes.
 19 Q What are these?
 20 A Okay, again, just notification that we
 21 have not heard from Worldwide Subsidy Group
 22 regarding the monies that they owed us.

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1 MR. MACLEAN: Your Honor, I move
 2 Attachment J of SDC 602 into evidence.
 3 MR. BOYDSTON: No objection.
 4 MR. PLOVNICK: No objection.
 5 JUDGE BARRETT: Attachment J is
 6 admitted.
 7 (Whereupon, the above-referred to
 8 document was admitted into evidence as
 9 SDC 602 Attachment J.)
 10 MR. MACLEAN: Did you ever hear back
 11 from IPG or Worldwide Subsidy Group again
 12 regarding your money?
 13 MR. KOWALSKI: Not about -- there was
 14 no communication about this, no. No, I think
 15 that was probably the end of the conversation or
 16 communication on this issue.
 17 BY MR. MACLEAN:
 18 Q Was there ever any correspondence or
 19 communication between Bob Ross, Inc. and WSG or
 20 IPG about filing further claims on behalf of Bob
 21 Ross, Inc.?
 22 A Well, there were -- and they're not

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1 here and I don't have a total recollection.
 2 There was some correspondence from parties in
 3 Worldwide suggesting some continuation of our
 4 relationship which confused me entirely. And I
 5 don't think they're here.
 6 Q Did you authorize --
 7 A We never responded to those.
 8 Q Did you authorize -- oh, inquires from
 9 IPG relating to your programming and that kind of
 10 thing for making claims on your behalf?
 11 A Yes, as though none of this, you know,
 12 like there had never any interruption of this
 13 relationship between IPG, Worldwide and myself.
 14 You know, and I was totally confused by that
 15 because it seemed to me that that party had not
 16 been fully informed of what had transpired.
 17 Q Did you --
 18 A That they had been Denise Vernon, by
 19 the way. Again, I'm not sure of that.
 20 Q Did you ever authorize IPG or WSG to
 21 file any further claims?
 22 A No.

240

1 Q Are you aware that IPG filed a claim
 2 for Bob Ross, Inc. in July of this year for
 3 royalty year 2013?
 4 A No, I did not.
 5 Q This is the first time you're hearing
 6 that?
 7 A The first time I'm hearing that.
 8 Q Now, Mr. Kowalski, neither you nor Bob
 9 Ross, Inc. are a party in this hearing today, is
 10 that right?
 11 A That's correct.
 12 Q Do either you or Bob Ross, Inc. have
 13 any financial stake in the outcome of this
 14 hearing here?
 15 A No, I would say that my involvement
 16 here has really nothing to do with any
 17 expectation of any kind of gain out of this. It
 18 is strictly a civic performance on my part.
 19 It might sound trite, but I believe in
 20 our legal system and I think this is a
 21 contribution rarely provided to people, to
 22 citizens, and I thought should afford myself of

241

1 that.

2 MR. MACLEAN: Thank you. No further

3 questions.

4 JUDGE BARRETT: Mr. Boydston, before

5 you cross examine, any questions from MPAA for

6 Mr. Kowalski?

7 MS. PLOVNIK: No, Your Honor.

8 JUDGE BARRETT: Mr. Boydston?

9 MR. BOYDSTON: I'm happy to proceed,

10 Your Honor.

11 Can I just note that I'm coming just

12 after 2:30.

13 JUDGE BARRETT: Yes, since we go until

14 4:30, I try to hold off on an afternoon break.

15 MR. BOYDSTON: Very well.

16 JUDGE BARRETT: As long as we can

17 stand it.

18 CROSS EXAMINATION

19 BY MR. BOYDSTON:

20 Q Good afternoon, Mr. Kowalski. I'm

21 Brian Boydston. We've communicated, but now we

22 see each other in the flesh.

242

1 A Right.

2 MR. BOYDSTON: I represent Worldwide

3 Subsidy Group, also known as Independent

4 Producers Group.

5 Now, there's a bunch of binders here.

6 You've been at documents in one. I'd like to

7 show you some documents that are in another

8 binder.

9 Your Honor, my I approach?

10 JUDGE BARRETT: You may.

11 MR. BOYDSTON: If I may, I'll put this

12 on the side and bring a different one.

13 JUDGE STRICKLER: Mr. Boydston, if

14 you're directing the witness to exhibits, could

15 you --

16 MR. BOYDSTON: I came close, I was

17 just trying to be of assistance, that's all.

18 I was going to direct him to Exhibit

19 53.

20 Mr. Kowalski, the first page of

21 Exhibit 53 is a document which has already been

22 admitted into evidence in the previous exhibit.

243

1 It's just a copy that we've put in ours.

2 It's a copy of a letter from you to me

3 dated January 16, 2013. And you've already been

4 asked about that and I won't really dwell on it

5 because you've already explained what it was.

6 Let me ask you to take a look at the

7 second page and that is an email from me to you

8 dated February 1, 2013.

9 And what follows after that are

10 several other emails.

11 Your Honor, we can either have -- I

12 wish to, of course, question the witness on this.

13 I wish to move this into evidence. Do you want

14 me to --

15 JUDGE BARRETT: I thought you just

16 said it had already been admitted into evidence.

17 MR. BOYDSTON: Just page 1. The page

18 1 is -- we have a copy of that letter both in our

19 exhibit and the SDC has one in their exhibit.

20 JUDGE BARRETT: I see.

21 MR. BOYDSTON: But then there's all

22 these emails afterwards and I'm asking for

244

1 guidance from the Court of how you want me to --

2 do you want me to try to have him review all this

3 and then admit. I know you don't like questions

4 being of exhibits that are not officially

5 admitted yet.

6 JUDGE BARRETT: Let me ask counsel to

7 flip through the remainder of the exhibit and, if

8 you don't object, then we won't need to belabor

9 the point.

10 MR. MACLEAN: Your Honor, I object.

11 JUDGE BARRETT: Okay. On the basis

12 of?

13 MR. MACLEAN: Your Honor, this is a

14 page 2 of IPG 053 is an email from -- or purposed

15 to be an email from Mr. Boydston to Mr. Kowalski

16 referencing an attachment. That attachment is

17 not included. I object on the grounds of

18 completeness.

19 However, I have a copy of the

20 attachment three hold punched.

21 JUDGE BARRETT: How handy. Are you

22 offering them to augment this exhibit? Do you

245

1 want to have that marked separately?

2 MR. BOYDSTON: Your Honor, I would

3 have no objection to the admission of this

4 exhibit augmented with the attachment referenced.

5 JUDGE BARRETT: Okay.

6 MR. MACLEAN: I have no objection to

7 that.

8 JUDGE BARRETT: Okay, fine.

9 JUDGE STRICKLER: Do you want to see

10 it first to make sure it's really --

11 MR. BOYDSTON: I will, but I'm pretty

12 sure he's telling the truth.

13 JUDGE BARRETT: Okay. We will admit

14 Exhibit 53 and then we'll have that marked when

15 you redirect and admit it as augmentation of the

16 53.

17 MR. MACLEAN: Your Honor, if it could

18 be admitted as augmentation of 53, I'm not sure I

19 have any redirect, but I'll decide that later.

20 JUDGE BARRETT: Oh, okay. Right now?

21 We can do that. I'll ask the --

22 MR. BOYDSTON: Well, Your Honor, can

246

1 I see it?

2 JUDGE BARRETT: Yes, you may take an

3 opportunity to look that over and then you will

4 ask the clerk to simply incorporate that into 53,

5 presuming Mr. Boydston does not find it

6 objectionable.

7 MR. BOYDSTON: No, I do not. May we

8 admit this now with 53 so I can ask questions on

9 this as well?

10 JUDGE BARRETT: That suit me just

11 fine.

12 (Whereupon, the above-referred to

13 document was admitted into evidence as

14 IPG Exhibit 53.)

15 MR. BOYDSTON: Okay. Should I give a

16 copy to the clerk to mark it a certain way and

17 put in the witness copy?

18 JUDGE BARRETT: She can just put a

19 sticker on it that it's an addition to Exhibit

20 53.

21 JUDGE STRICKLER: And are we going to

22 add it directly the Friday, February 1, 2013

247

1 email from you to Mr. Kowalski that identifies

2 the attachment?

3 MR. BOYDSTON: Yes, I think that makes

4 the most sense.

5 JUDGE STRICKER: It sure seems to,

6 yes.

7 MR. BOYDSTON: May I go ahead and

8 insert it in the binder?

9 Your Honor, I believe you did say that

10 Exhibit 53 is admitted, correct?

11 JUDGE BARRETT: It is admitted as

12 augmented.

13 MR. BOYDSTON: Yes, thank you, Your

14 Honor.

15 Okay, Mr. Kowalski, take a look at the

16 first page of Exhibit -- excuse me, what would be

17 second page of Exhibit 53, which would be the

18 page previous to what you're looking at now.

19 My I approach, Your Honor?

20 JUDGE BARRETT: You may.

21 MR. BOYDSTON: And that appears to be

22 an email from me to you dated February 1st, would

248

1 you agree?

2 MR. KOWALSKI: Yes.

3 BY MR. BOYDSTON:

4 Q And I won't read it, but it refers

5 right away to an attached list and do you recall

6 receiving this?

7 A I do.

8 Q And the second of the two paragraphs,

9 it states, in the meantime, I asked in our

10 telephone call, could you send us all of your

11 correspondence with WSG and whatever information

12 you may have about All Global Media's filing of

13 claims for Bob Ross, Inc.

14 Now, in response to that email, do you

15 recall whether or not you provided me or IPG or

16 WSG, which is actually -- if I may, I'll

17 represent to you that IPG is a d/b/a of WSG. Are

18 you familiar with what a d/b/a is?

19 A Yes.

20 Q So, if I say IPG or WSG for the

21 purposes of my questions, they mean the same

22 entity. Do you understand that?

249

1 A Okay, but it depends on how far back
2 you're going because my understanding would not
3 have meant your understanding in those earlier
4 years because I wasn't relating IPG with
5 Worldwide Subsidy Group.

6 Q Well, then I won't do that, I'll be
7 very specific when I ask the questions.

8 In response to that second paragraph
9 asking about information about All Global Media,
10 did you provide any information to myself or to
11 anyone else?

12 A No.

13 Q Is there any reason why you didn't?

14 A Probably I didn't view that it was my
15 job. I wasn't obligated in some way to do your
16 work for you or to provide you anything because
17 we had no real relationship from my perspective.
18 So, if there was any searching for data to
19 support your position, that was your job.

20 Q Now, you were aware that WSG, and I
21 think you stated that WSG had sent you checks
22 over the years, correct?

250

1 A True.

2 Q And that you'd gone ahead and
3 negotiated those checks, correct?

4 A True.

5 Q So, you had had some connection with
6 WSG, correct?

7 A The earlier understanding was that it
8 was simply a mechanism for transmitting funds. I
9 didn't identify it as an organization per se.

10 Q Okay. Now, let's look at the next
11 page which is the insert that we have from the
12 courtesy of Mr. MacLean, and I think what this
13 clears up is that if we look to the second page,
14 that's my email all over again and then if we
15 look at the bottom of the first page, there is an
16 email from you to me saying that there were no
17 attachments to this email.

18 And then a quick email from me saying,
19 sorry about that, here it is. And then an email
20 from you to -- it was from Joan at Bob Ross to
21 Walt saying, Boydston's attachment, need help
22 with this.

251

1 I think what this just reflects is
2 that I screwed up or I made a mistake and I
3 didn't attach the attachment at first and then
4 sent it again to give you the attachment,
5 correct?

6 A Okay, true.

7 Q Do you agree?

8 A I agree.

9 Q So, now, turning to the attachment
10 itself, which is behind the email portion, it
11 says, search results and it lists different dates
12 and then account, a number, a payee and other
13 information.

14 When you go this, did you take a look
15 at it?

16 A I would say I scanned it but I don't
17 think I did any comparisons with my own
18 information or anything, no.

19 Q Okay. When you looked at it, did you
20 think that anything here was incorrect or remiss?

21 A I saw that you did acknowledge that I
22 had -- that there were differences between WSG

252

1 royalties and IPG royalties paid. So, and I
2 don't know that I concluded anything from this
3 attachment.

4 Q Is it your position or at the time
5 that you saw it, did you think to yourself that
6 you had not, in fact, never received the payments
7 that were indicated?

8 A No, I think I was okay with what I had
9 known that we had received regardless of how they
10 were transmitted to us.

11 Q Okay. Sitting here today, do you have
12 any reason to have a different opinion on that or
13 different knowledge about that?

14 A No, except for your revelation that
15 you collected a sum of money of mine.

16 Q I beg your pardon?

17 A Except for this new revelation today
18 that you had filed again for -- you had filed a
19 claim on my behalf for royalties which --

20 Q Which you didn't know before now?

21 A Correct.

22 Q Let's look at the next page of the

253

1 exhibit and this references the first email, it's
2 an email from me on February 14th, St.
3 Valentine's Day as it were, of 2013 in which I
4 state that we have no record of Bob Ross, Inc.
5 informing WSG that it no longer had the right to
6 make these claims and some other information
7 there.

8 Below that is an email from you to me
9 to which I was responding. Do you see that? It
10 begins, please direct your client --

11 A Oh, yes, right.

12 Q And you were asking that WSG send you
13 the full amount of the royalties that had been
14 delivered for 2008, correct?

15 A Correct.

16 Q And going back up to the email by me
17 responding, the last sentence say, if you'll
18 provide us with a notice of termination, Bob
19 Ross, Inc. gave to WSG, we will proceed
20 accordingly and return the money to PBS.

21 Did you provide any information
22 regarding a termination at that point?

254

1 A I disagreed, of course, with this
2 notice of termination. None was required.

3 Q Okay. I appreciate that. Did you
4 send any materials in response to this?

5 A No.

6 Q Look at the, not the next page, but
7 the one after that which is an email from me to
8 you dated February 27, 2013.

9 A Right, yes.

10 Q And it begins, I still have not heard
11 from you following my last correspondence
12 requesting that you forward whatever
13 correspondence you have verifying your contention
14 that Bob Ross, Inc. terminated its agreement with
15 WSG.

16 Did you provide any information in
17 response to that?

18 A I don't think so.

19 MR. BOYDSTON: Now, let me go over to
20 the other binder.

21 Your Honor, may I approach?

22 JUDGE BARRETT: You may.

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1 MR. BOYDSTON: And we'll be looking at
2 what's been marked and admitted as Exhibit 602,
3 specifically starting with Attachment D.

4 Now, Mr. Kowalski, Attachment D was
5 the agreement you signed with All Global Media,
6 correct?

7 MR. KOWALSKI: Yes.

8 BY MR. BOYDSTON:

9 Q Now, in your testimony, you said that
10 you either said or said words to the effect, I
11 believe, that you thought that All Global Media
12 was another reconstruction, I think was the word
13 you used, of the entity that you had been dealing
14 with previously, correct?

15 A In that it was Marion Oshita who was
16 submitting it to me. I thought that was my cause
17 for thinking that this was more a continuation of
18 my relationship with her. Right, yes, I did say
19 that.

20 Q And that perhaps she was operating
21 under the company Worldwide Subsidy Group and no
22 longer was doing that and was now operating under

256

1 All Global Media?

2 A No, that would be too early for me to
3 say that it was under auspices of Worldwide
4 because I hadn't yet in my mind linked Worldwide
5 with All Global Media or with IPG.

6 Q Oh, I think I understand. If you
7 could turn back to Attachment C which just
8 precedes this one. That begins with a cover
9 letter that says Independent Producers Group and
10 then mandate agreement in which the parties are
11 Bob Ross, Inc. signed by you and Independent
12 Producers Group.

13 So, the entity that you thought you
14 were dealing with was Independent Producers
15 Group, is that right?

16 A Not necessarily, it's because she says
17 she has new organizational name here. I didn't
18 know whether that it was a -- well, I just
19 assumed, I think, that it since it was Marion
20 Oshita and she and I had been exchanging
21 documentation and had an agreement prior to this
22 and that she wanted to continue the agreement.

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1 Q Right. I feel I may have confused
2 matters by an earlier question I asked when I
3 said do you believe that All Global Media was a
4 reconstruction of Worldwide Subsidy Group and you
5 said no, Worldwide Subsidy Group, I wasn't
6 familiar with that entity.
7 And I think is that because the entity
8 that the three mandate agreements were
9 Independent Producers Group, not Worldwide
10 Subsidy. Is that the reason?
11 A That's ordinarily what I would be
12 thinking, yes.
13 Q I understand, I apologize, it was my
14 mistake mixing up the two entities.
15 Well, if we could kind of wipe the
16 slate clean to a degree, I believe what you're
17 saying is that mandated agreements were with
18 Independent Producers Group and you understood
19 Marion Oshita to be working under the name
20 Independent Producers Group to begin with,
21 correct?
22 A Right.

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1 Q And then when you got this different
2 agreement from All Global Media from Marion
3 Oshita, you assumed that Marion Oshita was now
4 operating under the name of a different company
5 or a different name which was All Global Media.
6 Is that what you meant by the reconstruction?
7 A Yes.
8 Q I understand now. Thank you.
9 Now, looking back at Attachment D, and
10 that is again the All Global Media contract and
11 fax cover sheet.
12 Did you note that -- I don't know if
13 you did or not -- but did you note that Marion
14 Oshita's address was that same on the fax cover
15 sheet as it had been previously? There's an
16 address up in the upper left hand corner of the
17 fax cover sheet.
18 A I'm not sure I was making that kind of
19 a comparison, no. Nor would it have been all
20 that important to me, I don't think.
21 Q Okay. Did you ever speak with Ms.
22 Oshita about the difference in the two entity

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1 names, Independent Producers Group and All Global
2 Media?
3 A No.
4 Q After receiving the All Global Media
5 agreement, do you know whether or not -- do you
6 recall whether or not you ever spoke with Ms.
7 Oshita?
8 A I don't think I ever spoke to Ms.
9 Oshita.
10 Q Never, ever?
11 A Ever.
12 Q Understood. Now, obviously, in this
13 exhibit where we're looking right now is the All
14 Global Media agreement that you signed.
15 Prior to -- well, presumably, you
16 provided this to the attorney who's representing
17 the Settling Devotional Claimants so that they
18 can provide it in this exhibit, correct? Or did
19 your counsel provide it or do you know?
20 A I'm sorry, do that again.
21 Q Let me start all over again.
22 The All Global Media agreement you

260

1 have a copy of, or you have perhaps the original,
2 correct?
3 A Yes.
4 Q How did it get to become in this
5 exhibit book is my --
6 A Well, when you say original, it would
7 have been something faxed, I'm sure, back and
8 forth. So, in that context, yes, original.
9 Q Okay, I understand. And how was it
10 that it got to be in this exhibit book? Did you
11 provide it to your counsel or did you provide it
12 directly to counsel for the SDC? Do you know?
13 A I gave it to my counsel.
14 Q Okay. And at any time, as far as you
15 know, has it been provided to WSG or, excuse me,
16 either IPG or WSG?
17 A No.
18 Q Okay. Did you ever -- well, strike
19 that.
20 You do recall that it was requested
21 that you provide it, correct?
22 A Not that, specifically, no. unless you

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1 have something that says that.
 2 MR. BOYDSTON: Well, let me make sure,
 3 let me see.
 4 Well, let me ask you --- Your Honor,
 5 may I approach?
 6 JUDGE BARRETT: You may.
 7 MR. BOYDSTON: I'm jumping back and
 8 forth between the books a tad.
 9 I'm looking back at Exhibit 53 and
 10 specifically I'm looking at an email dated March
 11 5, 2013 which would be I believe nine pages in if
 12 my counting is correct.
 13 MR. KOWALSKI: Of IPG, what tab?
 14 BY MR. BOYDSTON:
 15 Q Fifty-three. It should be the tab
 16 that you're on.
 17 A Okay, five pages in?
 18 JUDGE STRICKLER: Two pages from the
 19 back.
 20 MR. BOYDSTON: Thank you, Your Honor.
 21 Two pages from the back is a better way to --
 22 MR. KOWALSKI: Okay.

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1 BY MR. BOYDSTON:
 2 Q Do you see it now?
 3 A I do.
 4 Q Okay. Looking at the third paragraph,
 5 the first sentence is kind of long. The second
 6 sentence is not long, well, it's up to the
 7 reader, I guess. I'm sorry, I lost my place,
 8 give me just a moment.
 9 If you look at the last sentence in
 10 the third paragraph, it begins, also including
 11 should be all documents. Do you see that?
 12 A Yes.
 13 Q It says, also included should be all
 14 documents relating to All Global Media, the
 15 principle of which was an IPG principle at the
 16 time, but she was apparently soliciting Bob Ross,
 17 Inc.
 18 Did you provide the All Global Media
 19 contract you signed in response to that email?
 20 A No.
 21 Q Okay. And I believe that you received
 22 checks -- well, I don't know. It appears to me

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1 from the list of checks that was attached to the
 2 one email that there were checks that were
 3 provided to you both my WSG and IPG. Does that
 4 sound familiar to you?
 5 And again, I'm sorry, that would be
 6 towards the front of the exhibit. It would be
 7 the one, two, three, four, the fifth page of the
 8 exhibit, it was that short spreadsheet.
 9 A Okay, that's the one we just inserted?
 10 Q Yes, exactly.
 11 A Okay. Okay, and your question?
 12 Q My question is, do you recall whether
 13 or not received checks from both WSG and IPG or
 14 is there only one or the other or do you recall?
 15 A I don't recall particularly.
 16 Q Okay. I think in your original
 17 testimony -- well, I think, is it fair to say you
 18 recall receiving these checks, you just don't
 19 recall which ones had which name on them?
 20 A Well, that wasn't your first question,
 21 but --
 22 Q No, it was not, thank you.

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1 A Looking at this one document, I can
 2 say I don't know whether any of them were -- all
 3 were WSG or some -- and some IPG. I can't answer
 4 that question.
 5 Q Okay. And I apologize but I'm going
 6 to try and clarify this so it's very, very clear.
 7 I'll just do it this way.
 8 Do you recall whether or not you
 9 received checks that said WSG on them?
 10 A I do.
 11 Q Thank you. Do you recall whether you
 12 received checks that said IPG on them?
 13 A No.
 14 Q Okay, thank you. Turning back to my
 15 February 1st email which is the second page of
 16 the exhibit and then it precedes the stuff we
 17 added in.
 18 A Okay.
 19 JUDGE STRICKLER: Which is it?
 20 MR. BOYDSTON: Exhibit 53. And again,
 21 that second paragraph -- in that second
 22 paragraph, I ask, in the meantime, as I asked in

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1 our telephone call, could you send us all of your
2 correspondence with WSG and whatever information
3 you have about All Global Media's filing claims
4 for Bob Ross, Inc.

5 I believe you've already testified and
6 you said sent nothing in response to that,
7 correct?

8 MR. KOWALSKI: Yes, yes.

9 BY MR. BOYDSTON:

10 Q Did you have any information regarding
11 All Global Media's filings of claims on your
12 behalf or on Bob Ross, Inc.'s behalf?

13 A Yes.

14 Q And what sort of things did you have?

15 A I had received checks from them.

16 Q I understand. Did you have anything
17 else that would indicate that they had made
18 filings?

19 A No documents that I know of, no.

20 Q Okay. Do you recall approximately how
21 many checks you received from All Global Media?

22 A No, I can't say how many, but I know

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1 And so, then I better understood why
2 I was receiving those checks from Worldwide
3 Subsidy Group.

4 Q Did it ever occur to you that
5 Worldwide Subsidy Group might not know that you
6 had signed an agreement with All Global Media?

7 A I don't know if I ever made that
8 judgment in my own mind.

9 Q Did Marion Oshita ever communicate to
10 you that there was a dispute over the ownership
11 of Worldwide Subsidy Group?

12 A No.

13 MR. BOYDSTON: Did Marion Oshita ever
14 explain to you that in 2005 there was a judgment
15 handed down which held that she was not the owner
16 of WSG?

17 MR. MACLEAN: Objection, Your Honor.
18 That's not in evidence.

19 MR. OLANIRAN: This is irrelevant.

20 JUDGE BARRETT: Sustained.

21 MR. BOYDSTON: Did Marion Oshita ever
22 tell you -- and you've already testified what

266

1 it was just for years 2004, '05 and '06.

2 Q And after 2006, you didn't receive any
3 checks from All Global Media then?

4 A No.

5 Q Okay. Now, you did receive checks
6 though from WSG and/or IPG after that, correct?

7 A Yes.

8 Q So, and then you were communicating
9 with WSG. Why was it that you didn't try to
10 explain to WSG that -- strike that.

11 Did you ever ask WSG why it was
12 sending you checks?

13 A No, because it wasn't, again, it
14 depends on the time factors again. I was
15 beginning to be suspicious fo things about 2012
16 which is the preponderance of the checks that
17 were received from Worldwide Subsidy Group.

18 And so, while I was curious about it,
19 I didn't do anything at that point but it was
20 soon evident after that because of my discovery
21 from PBS that you had, in fact, been filing on my
22 behalf.

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1 some of your conclusions were -- but this
2 question's a little more detailed.

3 And it's whether or not Marion Oshita
4 ever told you that WSG was changing its name to
5 All Global Media? Do you ever -- did you ever
6 get any correspondence or any explanation like
7 that?

8 MR. KOWALSKI: No.

9 MR. BOYDSTON: Your Honor, I think I'm
10 finished, just give me one more moment to confirm
11 that, if I may.

12 Thank you, Your Honor, I have nothing
13 further.

14 JUDGE BARRETT: Okay. Thank you. Mr.
15 MacLean, how many redirect questions?

16 MR. MACLEAN: Four.

17 JUDGE BARRETT: I'll let you ask four
18 questions.

19 Why is this examination different from
20 all others?

21 MR. MACLEAN: I didn't say one
22 question, Your Honor.

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1 REDIRECT EXAMINATION
 2 BY MR. MACLEAN:
 3 Q Mr. Kowalski, do you -- and I don't
 4 know, I don't want this question counted me
 5 against me, Your Honor.
 6 Do you have IPG Exhibit 53 in front of
 7 you?
 8 A Which one?
 9 MR. MACLEAN: IPGP 53. Let me -- if
 10 I may approach, Your Honor?
 11 JUDGE BARRETT: You may.
 12 MR. KOWALSKI: I think I'm in the
 13 right place, yes, oh, 53, yes.
 14 MR. MACLEAN: Okay. If you could turn
 15 to the third page of IPGP 53 which is an email
 16 from Brian Boydston to you dated February 14,
 17 2013.
 18 MR. KOWALSKI: Yes.
 19 BY MR. MACLEAN:
 20 Q And looking at the email at the top
 21 there, do you see the last line that says,
 22 therefore?

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1 A Yes.
 2 Q If you will provide us with the notice
 3 of termination Bob Ross gave to WSG we will
 4 proceed accordingly and return the money to PBS.
 5 Do you see that there?
 6 A Yes.
 7 Q Now, you've already explained why
 8 there was no notice of termination. Did you have
 9 any understanding as to why WSG would return the
 10 money to PBS?
 11 A No.
 12 Q To your knowledge, did you ever get
 13 any indication that WSG did return the money to
 14 PBS?
 15 A No, no.
 16 Q After you returned the check to WSG,
 17 did you ever receive any further correspondence
 18 from or communication from WSG or its counsel?
 19 A No.
 20 MR. MACLEAN: No further questions,
 21 Your Honor.
 22 JUDGE BARRETT: Okay.

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1 JUDGE STRICKLER: Cross, if I may? In
 2 the same exhibit that you have in front of you
 3 which is IPG 53.
 4 MR. KOWALSKI: Okay.
 5 JUDGE STRICKLER: That very first
 6 letter, the letter on the Bob Ross letterhead.
 7 MR. KOWALSKI: Yes.
 8 JUDGE STRICKLER: Signed by you, sir?
 9 MR. KOWALSKI: Yes.
 10 JUDGE STRICKLER: You say at the very
 11 beginning, Dear Mr. Boydston, we learned recently
 12 that PBS distributed \$19,000.00 and it goes on.
 13 How did you learn that PBS had
 14 distributed the money?
 15 MR. KOWALSKI: Okay, I think I sent a
 16 letter to PBS or it was through legal counsel.
 17 JUDGE STRICKLER: Which legal counsel
 18 are you referring to?
 19 MR. KOWALSKI: Well, it would be Mr.
 20 Hammerman, sorry.
 21 JUDGE STRICKLER: Mr. Hammerman was
 22 the first one to inform you about the \$19,000.00

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1 begin distributed by PBS to Worldwide Subsidy
 2 Group?
 3 MR. KOWALSKI: Yes.
 4 JUDGE STRICKLER: Thank you.
 5 RECROSS EXAMINATION
 6 BY MR. BOYDSTON:
 7 Q Staying on the February 14th letter
 8 that Mr. Maclean just asked you about, the middle
 9 sentence, if you will, says, WSG knows it is
 10 missing certain documents and acknowledges that
 11 it is possible that such notice was given.
 12 Being informed that WSG knew it was
 13 missing some documents, did this occur to you
 14 that this might be a misunderstanding that could
 15 be cleared up by providing some information?
 16 A Misunderstanding that a notice was
 17 required?
 18 Q Well, just a misunderstanding that WSG
 19 didn't have all the relevant documents and it was
 20 asking you for help to get them so that WSG
 21 itself could form an understanding of why it was
 22 that you were taking the position that you were?

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1 A Well, I'm not sure what documents that
2 you would have been searching for. There would
3 be no document that would have terminated our
4 relationship because that was automatically taken
5 care of by the mandated agreements. They were
6 good for one year, so no termination notices were
7 required.

8 Q I understand that.

9 A To my understanding.

10 Q I understand that. Did it ever occur
11 to you that perhaps WSG didn't have the mandate
12 agreements?

13 A No.

14 Q I mean I can understand that you might
15 have thought, well, it's WSG, they should have
16 their agreements. And was that your thought?

17 A No.

18 MR. BOYDSTON: Okay. Did it ever
19 occur to you that it might help WSG if you
20 provided the All Global Media agreements that WSG
21 could see that you signed that agreement in 2005
22 and that agreement governed from 2005 forward?

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1 MR. OLANIRAN: Objection to form,
2 compound.

3 JUDGE BARRETT: Sustained.

4 MR. BOYDSTON: Did it ever occur to
5 you that it might help inform WSG as to why you
6 were taking the position you were if you gave WSG
7 the All Global Media agreements?

8 MR. KOWALSKI: Okay. My
9 interpretation of this would have been that there
10 was no reason to be searching for documents
11 because there was nothing ongoing and none --
12 again, you know, I think that why this reliance
13 on Bob Ross, Incorporated when none was required?

14 MR. BOYDSTON: I understand. Did it
15 ever occur to you that Worldwide Subsidy Group
16 might have been the victim of circumstance or
17 might have made a mistake?

18 MR. MACLEAN: Objection.

19 JUDGE BARRETT: Sustained.

20 MR. BOYDSTON: Well, I'm sorry, what
21 was the objection?

22 MR. MACLEAN: Well, calls for

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1 speculation, lack of foundation and also
2 relevance.

3 JUDGE BARRETT: Thank you. Do you
4 want to add anything to this?

5 MR. OLANIRAN: Argumentative, Your
6 Honor.

7 MR. BOYDSTON: Well, you had
8 communications saying to you essentially we don't
9 understand everything, could you give us some
10 information. You didn't provide any information,
11 did you?

12 MR. KOWALSKI: No.

13 BY MR. BOYDSTON:

14 Q Thank you, Your Honor.

15 Oh, the last check that was sent to
16 you that Mr. MacLean asked you about, why was it
17 that you didn't deposit that check?

18 A Because it wasn't the total amount.

19 MR. BOYDSTON: Thank you, nothing
20 further.

21 JUDGE STRICKLER: Mr. Kowalski, I just
22 wanted to follow-up briefly on a question I'd

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1 asked you before.

2 You had said you when you wrote that
3 you had learned recently that PBS had distributed
4 the \$19,000.00 plus, you believe you learned it
5 from Mr. Hammerman who was counsel, is that
6 correct?

7 MR. KOWALSKI: I must have meant that
8 my recollection is vague on this. I may, and I
9 was looking for it, I may have sent a letter on
10 my own to PBS and I -- but I can't remember
11 precisely at this point.

12 JUDGE STRICKLER: Had you been in
13 touch with anyone from the SDC or the MPAA at
14 that point before you wrote the letter?

15 MR. KOWALSKI: No.

16 JUDGE STRICKLER: Thank you.

17 JUDGE FEDER: Mr. Kowalski, you said
18 that your daughter had been to some sort of PBS
19 event and that that's what kind of spiked your
20 suspicions. Can you explain what did she report
21 to you that you found suspicious?

22 MR. KOWALSKI: Speculating, I think I

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1 was already creating some questions in my mind
2 because of these last minute payments that we
3 were getting with letterheads covered by
4 Worldwide Subsidy Group.

5 And probably meaning to look into this
6 more closely and then to hear from her that she
7 had been at a PBS trade event where she has a
8 booth showing Bob Ross and his activities.

9 And it was there that she was hearing
10 rumblings about that there were -- there seemed
11 to questions about payments of royalties, et
12 cetera. And she reported that to me and that --
13 and I think my remark to her probably was, you
14 know, I've been meaning to look into that myself.

15 JUDGE STRICKLER: Did she tell you
16 about problems -- I'm sorry -- tell you about
17 problems with royalties with regard to any of
18 these particular named entities or just problems
19 with royalties in general?

20 MR. KOWALSKI: In general, I don't
21 think she mentioned any entities. But she knew
22 that we had this ongoing -- she was already aware

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1 have IPG represent Bob Ross, Inc. in any form or
2 fashion going forward, correct?

3 MR. KOWALSKI: Yes.

4 MR. OLANIRAN: Okay. And the next
5 page in that exhibit is the -- I guess it's more
6 than one question.

7 The next page in that exhibit in which
8 I think the second paragraph, Mr. Boydston is
9 requesting information.

10 Your interpretation on the basis of
11 your January 16 letter is that you had no
12 obligation to provide any information to Mr.
13 Boydston having made it clear that you had no
14 relationship with him, correct?

15 MR. KOWALSKI: Correct.

16 MR. OLANIRAN: Thank you.

17 JUDGE STRICKLER: Mr. Kowalski, have
18 you ever received from any source the payment of
19 the \$19,503.66 that apparently was due for the
20 2008 year?

21 MR. KOWALSKI: No, we've not yet
22 received that money, no, that was collected by

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1 of the fact that we had a file on an incident we
2 were receiving royalties from somebody. So it
3 was more of the tipoff to be alert and that was
4 the point at which we engaged our own counsel.

5 JUDGE STRICKLER: Thank you.

6 JUDGE BARRETT: Mr. Olaniran?

7 MR. OLANIRAN: Just one quick
8 question, Your Honor, if I may?

9 JUDGE BARRETT: You may.

10 MR. OLANIRAN: Good afternoon, Mr,
11 Kowalski.

12 MR. KOWALSKI: Good afternoon.

13 MR. OLANIRAN: My name is Greg
14 Olaniran. I represent MPAA. I just have one
15 final -- I just have one question I want to get
16 clarification on in your earlier testimony.

17 You sent a letter to Mr. Boydston, a
18 letter dated January 16 of 2013. That's the
19 first page, I believe in the --

20 MR. KOWALSKI: Yes, right.

21 MR. OLANIRAN: And I think about two
22 paragraphs down, you instruct Mr. Boydston not to

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1 Worldwide Subsidy.

2 JUDGE STRICKLER: Thank you.

3 MR. BOYDSTON: Your Honor, may I ask
4 a question?

5 JUDGE BARRETT: You may.

6 MR. BOYDSTON: Mr. Kowalski, although
7 you did not receive a check for \$19,503.66, did
8 you receive the check that you returned in the
9 amount of approximately I think \$14,000.00 and
10 change?

11 MR. KOWALSKI: I think it was
12 \$15,000.00-something, yes.

13 BY MR. BOYDSTON:

14 Q Yes. And that's the one you returned?

15 A Yes.

16 Q And I believe you -- did you receive
17 that in April of 2013 thereabouts?

18 A I don't remember.

19 Q Was it within several months after
20 this email?

21 A Not anywhere in here, okay, no, I'm a
22 little bit unsure of the date, sorry.

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1 JUDGE STRICKLER: Mr. Kowalski,
2 regardless of you understood was your agent for
3 the year 2008 for purposes of collecting the
4 royalties, did you have an understanding that
5 whatever entity was your appropriate agent that
6 agent was going to take a percentage pursuant to
7 your agreement with that agent?
8 MR. KOWALSKI: Yes.
9 JUDGE STRICKLER: Do you have an
10 understanding of what that percentage was?
11 MR. KOWALSKI: Fifteen percent.
12 JUDGE STRICKLER: Because that was in
13 the --
14 MR. KOWALSKI: All Global Media.
15 JUDGE STRICKLER: All Global Media.
16 And the amount that was being withheld by IPG or
17 Worldwide Subsidy Group was 20 percent?
18 MR. KOWALSKI: Twenty to 30 percent.
19 JUDGE STRICKLER: Well, which was it?
20 Do you recall off hand? Was it 20 percent?
21 MR. KOWALSKI: Both, there were some
22 received at 20 percent and some received at 30

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1 percent.
2 JUDGE STRICKLER: Was the one in
3 question, the \$19,000.00 and change, was that a
4 20 percent or a 30 percent, if you know?
5 MR. KOWALSKI: I don't remember.
6 JUDGE STRICKLER: Well, the numbers --
7 you need math to figure that out?
8 MR. KOWALSKI: I don't -- I
9 understand. I'm sure it's here somewhere.
10 MR. BOYDSTON: I have nothing further.
11 MR. KOWALSKI: Oh, this is your book.
12 JUDGE BARRETT: Anything further from
13 counsel based on Judge Strickler's last question?
14 MR. MACLEAN: No, Your Honor.
15 MR. OLANIRAN: No, Your Honor.
16 JUDGE BARRETT: Okay. We are at recess
17 for 15 minutes.
18 MR. MACLEAN: Your Honor, may the
19 witness be excused?
20 JUDGE BARRETT: Yes.
21 MR. KOWALSKI: Thank you.
22 JUDGE BARRETT: Thank you.

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1 (Whereupon, the above-entitled matter
2 went off the record at 3:18 p.m. and resumed at
3 3:41 p.m.)
4 JUDGE BARRETT: Please be seated. Mr.
5 Boydston, are we ready to resume -- oh, Mr.
6 Olaniran is going to resume.
7 MR. BOYDSTON: I think he's on again.
8 (Laughter.)
9 WHEREUPON,
10 RAUL GALAZ,
11 the Witness, having been previously sworn,
12 resumed the stand and testified as follows:
13 CROSS EXAMINATION
14 BY MR. OLANIRAN:
15 Q Good afternoon, Mr. Galaz. Greg
16 Olaniran, counsel for the Motion Picture
17 Association.
18 A Good afternoon.
19 Q And thank you for accommodating all of
20 the day's schedules. You were cut at midpoint in
21 your cross-examination. I have just one
22 question, except it's in multiple parts. Just in

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1 the spirit of Mr. MacLean's questioning fashion.
2 Would you please turn to Exhibit 332?
3 (Pause.)
4 THE WITNESS: Okay, I'm there.
5 BY MR. OLANIRAN:
6 Q You're there? And this is the
7 affidavit that Mr. Fred Nigro, on behalf of
8 Worldwide Pants. Do you see that?
9 A Yes.
10 Q And the affidavit talks about why it
11 is -- its distributor CBS, and not IPG, is
12 entitled to claim royalties on its behalf, right?
13 A If you could direct me to the
14 paragraph.
15 Q If you look at paragraph eight of the
16 -- it's on the next page, on page two of the
17 affidavit.
18 A Okay, I see that paragraph.
19 Q Do you see that? And it talks about
20 its distribution deal with CBS; correct?
21 A The distribution deal?
22 Q It talks about CBS being its

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Via Email and Federal Express

February 7, 2017

Brian D. Boydston, Esq.
Pick & Boydston, LLP
10786 Le Conte Avenue
Los Angeles, CA 90024

Re: Return of 2008 Cable Royalties for Bob Ross, Inc.

Dear Mr. Boydston:

We represent the Public Broadcasting Service ("PBS").

In the fall of 2012, PBS distributed \$19,503.66 in royalties to your client Worldwide Subsidy Group/IPG ("IPG") based on IPG's claim that it represented Bob Ross, Inc. ("Bob Ross") with regard to cable retransmission royalties for 2008. As you know, IPG's claim to those royalties was ultimately disallowed by the Copyright Royalty Judges, and you recently conceded to the Judges that that claim was "made in error." *See Memorandum Opinion and Ruling on Validity and Categorization of Claims*, No. 2012-6 CRB CD 2004-2009 (Phase II), Ex. A-2 at 2 (Mar. 13, 2015); *Multigroup Claimants' Opposition to MPAA Motion for Disallowance of Claims Made by Multigroup Claimants*, No. 14-CRB-0010-CD 2010-2013, at 31 (Oct. 28, 2016) ("IPG ... conceded [that its claims for Bob Ross] had been made in error").

We understand that efforts between Bob Ross and IPG to resolve this matter and correct this error have failed. In describing certain of those efforts to the Judges, you indicated that instead of sending the royalties to Bob Ross, IPG would be willing "for the entire amount to be returned to PBS." *Multigroup Claimants' Opposition to Settling Devotional Claimants' Motion to Disqualify Multigroup Claimants and to Disallow Certain Claimants and Programs*, No. 14-CRB-0010-CD 2010-2013, at 33 (Oct. 28, 2016). PBS has since been copied on letters to you from Bob Ross' attorney, dated November 10, 2016, and January 12, 2017, confirming that Bob Ross wishes and has requested that your client "remit the full amount of \$19,503.66 to PBS."

Accordingly, and in light of the Judges' ruling and your representations to the Judges, we ask that IPG return the entire \$19,503.66 to PBS as soon as possible, and by no later than February 24, 2017.

Sincerely,



Ronald G. Dove, Jr.

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Brian D. Boydston, Esq.
February 7, 2017
Page 2

RGD/cpt

cc (via email):

R. Scott Griffin, Esq. (Assistant General Counsel, PBS)
Sandra Pope (Director of Copyright, PBS)
Edward S. Hammerman, Esq. (Counsel for Bob Ross, Inc.)
Walter Kowalski (Bob Ross, Inc.)
Joan Kowalski (Bob Ross, Inc.)

From: "Brian D. Boydston, Esq."
Sent: Feb 13, 2017 3:10 PM
To: "Dove,Ronald"
Subject: Re: Return of 2008 Cable Royalties for Bob Ross, Inc.

Dear Ronald,

Thank you for your letter regarding the above matter. As you are likely aware, Independent Producer's Group ("IPG") claims to post-2003 royalties on behalf of Bob Ross, Inc. ("BRI") were long ago determined to have been made despite a lack of documentation applicable to such royalty pools. Nonetheless, it is well established that IPG's claims were made in good faith with IPG's understanding that post-2003 authorization had been provided pursuant to a contract with a self-perpetuating term. Consistent therewith, several distributions of post-2003 royalties received by IPG were accounted to and accepted by BRI, tacitly affirming IPG's authority to make claim for such royalties.

Notwithstanding, in January 2013, BRI took a different, abruptly adversarial position. Despite previously receiving post-2003 royalties without objection, BRI accused IPG of having no authority to claim such royalties in a letter copied to PBS personnel. Not only was IPG accused of not having the authority to apply for and make claim to such royalties, but BRI demanded that IPG remit *the entirety* of the collected royalties to BRI, with no deduction for IPG's negotiated commission. IPG's immediate position was that if IPG did not, in fact, have authority to make claim for post-2003 royalties, then the entirety of any amounts remitted by PBS should be returned to PBS, with no distribution to BRI. Alternatively, IPG offered to remit the collected amount to BRI, less the negotiated commission of 20%, tacitly acknowledging IPG's authority in the same manner as BRI had previously done.

The foregoing offer was made by IPG in January 2013, and BRI refused. Nonetheless, in accordance with its legal obligations, IPG forwarded payment (via check) to BRI for eighty percent (80%) of the principal, which payment BRI refused to cash. To unnecessarily exacerbate matters, BRI then appeared in Copyright Royalty Board proceedings to accuse IPG of having engaged in *a fraud*, all the while reluctantly acknowledging the facts set forth above. After receiving the testimony of a representative of BRI confirming the foregoing facts, the Copyright Royalty Board did not even see fit to comment on the allegation of malfeasance, which was not brought by BRI, but in furtherance of challenges by the MPAA and the SDC.

To say the least, IPG is disappointed in PBS' newfound involvement in this matter, and is obligated to query PBS regarding the same. PBS' familiarity with this matter began over four years ago, as demonstrated by correspondence copied to PBS personnel. Moreover, PBS has been expressly aware of BRI's allegations and testimony in CRB proceedings. PBS' awareness regarding this matter for over four years makes clear that IPG has no further legal obligation to return the royalties to PBS. That ship has sailed. The question nonetheless remains why PBS has now chosen to involve itself in this matter, at this late date, and what it intends to do with any returned proceeds.

Moreover, despite your characterization of IPG having extended an offer to BRI, such offer was extended *four years ago*, i.e., not recently, and under very different circumstances. It was an

offer made prior to BRI's corroboration in public hearings that BRI's understanding until January 2013 was the same as IPG's, i.e., that IPG was making claim under an understanding regarding a continuing authority (and obligation) to make annual claim to BRI royalties, and that BRI accepted accountings and payments on such basis . Moreover, BRI's false and defamatory accusation of fraudulent conduct, all the while confirming the facts set forth herein, resulted in an unnecessary expenditure of resources to defend against the warrantless accusation, all in breach of the implied agreement between IPG and BRI. In any action between IPG and BRI, IPG would seek recompense for BRI's outrageous and defamatory conduct, for which IPG's damages far exceed any amount that BRI could possibly have been entitled for the collected royalties under any circumstance.

As such, IPG is obligated to inquire whether PBS intends to distribute any of the \$19,503.66 to BRI if such amount is returned to PBS by IPG. IPG would consider this to be in disregard of the statutory filing requirements for retransmission royalties, warranting comment upon PBS in future proceedings. Does PBS aver that IPG submitted post-2003 claims on behalf of Bob Ross, Inc. in bad faith, or that BRI did not acknowledge IPG's authority post-facto?

You had previously requested a response no later than February 24, 2017, but without explanation whether there is any significance to such date. If there is a significance, please clarify what that is as part of your response.

Thank you, and I look forward to your response.

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Via Email and Federal Express

February 24, 2017

Brian D. Boydston, Esq.
Pick & Boydston, LLP
10786 Le Conte Avenue
Los Angeles, CA 90024

Re: Return of 2008 Cable Royalties for Bob Ross, Inc.

Dear Mr. Boydston:

This letter responds to your February 13 email in the above-referenced matter.

As you may know, it has generally been PBS's policy not to get involved in disputes between claimants, agents or copyright owners over claims to public television royalties, preferring instead to allow those parties to resolve any such disputes on their own. One exception to this policy is where the Copyright Royalty Judges, a court, or both parties find or represent that a particular public television royalty payment has been made in error. In that case, PBS in its discretion may intervene to try to correct the error and distribute the royalties to the proper party.

With regard to the 2008 cable royalties for Bob Ross, Inc. ("Bob Ross"), PBS decided to get involved only after (i) the Copyright Royalty Judges "disallowed" IPG's claim to those royalties, *Memorandum Opinion and Ruling on Validity and Categorization of Claims*, No. 2012-6 CRB CD 2004-2009 (Phase II), Ex. A-2 at 2 (Mar. 13, 2015); (ii) IPG conceded in a filing with the Judges late last year that its claim to those royalties -- and thus PBS's payment to IPG -- "had been made in error," *Multigroup Claimants' Opposition to MPAA Motion for Disallowance of Claims Made by Multigroup Claimants*, No. 14-CRB-0010-CD 2010-2013, at 31 (Oct. 28, 2016); and (iii) IPG failed to respond to letters from Bob Ross's attorney dated November 10, 2016 and January 12, 2017 requesting that the royalties be returned directly to PBS.

It is well settled that cable retransmission royalties ultimately belong to the copyright owner, not its agent. *See, e.g., Memorandum Opinion and Order Following Preliminary Hearing on Validity of Claims*, No. 2008-02 CRB CD 2000-2003 (Phase II), at 8 (Mar. 21, 2013). Accordingly, upon return of the payment erroneously claimed by IPG, PBS intends to distribute those funds to Bob Ross, with the understanding that Bob Ross will warrant and represent that it is entitled to receive those funds and that the programs at issue are covered by a valid claim filed by an agent authorized by Bob Ross at the time of filing.

PBS takes no position at this time with regard to the intentions or motivations of any of the parties involved. We note only that one way to demonstrate good faith would be for IPG to

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Brian D. Boydston, Esq.
February 24, 2017
Page 2

return these funds to PBS, now that it has conceded they were claimed in error and do not belong to IPG.

For all these reasons, and those stated in our February 7 letter, we respectfully request that IPG return to PBS as soon as possible, and by no later than March 10, 2017, the entire \$19,503.66 in Bob Ross royalties paid to IPG as a result of its error. If you do not intend to return the funds, please state your reasons as to why you believe you are entitled to continue to keep royalties for a claim disallowed by the Judges that you admit was made in error.

Sincerely,



Ronald G. Dove, Jr.

RGD/cpt

cc (via email):

R. Scott Griffin, Esq. (Assistant General Counsel, PBS)
Sandra Pope (Director of Copyright, PBS)
Edward S. Hammerman, Esq. (Counsel for Bob Ross, Inc.)
Walter Kowalski (Bob Ross, Inc.)
Joan Kowalski (Bob Ross, Inc.)

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March 9, 2017

Covington & Burlington, LLP
Ronald G. Dove, Jr., Esq.
One City Center
850 Tenth Street, NW
Washington, D.C., 20001-4956

Via Email and U.S. Mail

Re: Return of 2008 Cable Royalties for Bob Ross, Inc.

Dear Ronald,

Thank you for your letter dated February 24, 2017 regarding the above matter. As indicated, you provided three explanations for PBS' newfound involvement in this matter. From my review, two of those are based on facts that were already acknowledged by IPG in January 2013, were known to PBS at that time, and were testified upon and stipulated to by all parties involved. Nevertheless, allow me to respond and clarify a few points that you raised therein.

Initially, you refer to a "disallowance" of claims by the CRB, but perhaps did not realize that such claims were not even being asserted by IPG. Specifically, in the consolidated proceedings the Settling Devotional Claimants asserted that circumstances regarding Bob Ross, Inc. (which had no relation to devotional programming claims) demonstrated chronic and ongoing "fraud" by IPG. All evidence was to the contrary, with citation to IPG's response in January 2013 and afterward demonstrating that IPG's claims were made subject to a good faith understanding of the rights granted, *and* Bob Ross, Inc.'s understanding of the same. As previously noted, Bob Ross, Inc. had on several occasions accepted post-2003 accountings and royalties from IPG. Testimony provided by a representative of Bob Ross, Inc. acknowledged all of the foregoing facts. Why the Judges' opinion "disallowed" claims that were not even being made by IPG (i.e., devotional claimant claims), as opposed to just stating that the SDC's allegation has no veracity or bearing on IPG's devotional program claims (or that such contractual matters were beyond the CRB's authority to adjudicate, as later opinions stated) is certainly a matter that you may take up with the CRB. Regardless, that opinion did not expound on the information and position acknowledged by IPG and known by PBS in January 2013.

Second, you refer to Multigroup Claimants' acknowledgment in the 2010-2013 proceedings of the same. But again, no new information is presented and, but again, no claim for Bob Ross, Inc. was even being made in those proceedings.

As far as IPG's failure to respond to letters by counsel for Bob Ross, Inc., it is for the rather obvious reason that such entity's counsel, Ted Hammerman, has regularly sent demand

PICK & BOYDSTON, LLP

Ronald G. Dove, Jr., Esq.

March 9, 2017

page two

letters to IPG over the last several years. IPG has clearly and publicly stated its position on several occasions, only to be ignored by Mr. Hammerman. Mr. Hammerman may continue to send letters on a daily basis in perpetuity and it would not affect IPG's position, nor is IPG obligated to re-state its position on these matters simply because Mr. Hammerman has elected, but again, to send a demand letter. Consequently, Mr. Hammerman's most recent letters are of no import.

By way of background, Mr. Hammerman attempted to make his career by poaching IPG clients. Specifically, Mr. Hammerman wrote articles that libelously asserted criminal activities on behalf of IPG, convinced unknowing online publications to publish those articles, then distributed those articles to IPG clients simultaneous with his solicitation of services. But for Mr. Hammerman's general inability to sway IPG clients, IPG ignored his actionable activities. It is in this same repugnant style that Mr. Hammerman, as legal counsel to Bob Ross, Inc., alleged "fraud" by IPG when all evidence indicated the contrary. To the discredit of Bob Ross, Inc., it allowed Mr. Hammerman to make those unfounded accusations.

As such, since the information in PBS' possession is no different than what was available in January 2013, and was acknowledged by IPG at that time, we are still at a loss to understand why PBS has now elected to get involved. Quite bluntly, the positions cited by you ring untrue for the obvious reason that they add no more information than was already known long, long ago. At this late juncture, i.e., more than four years following revelation of IPG's good faith collection of funds on behalf of Bob Ross, Inc. and IPG's accounting to Bob Ross, Inc. for such monies, this is clearly a contractual matter between IPG and Bob Ross, Inc., and not a matter between IPG and PBS. If you believe otherwise, please identify a *legal* basis for your contention.

As for PBS' stated intent of distributing the monies in their entirety to Bob Ross, Inc., that result was directly challenged by IPG, *ab initio*. You indicated that such distribution was subject to Bob Ross, Inc. "warranting" that Bob Ross, Inc. "is entitled to receive those funds and that the programs at issue are covered by a valid claim filed by an agent authorized by Bob Ross at the time of filing." To IPG's knowledge, no such claim was made by an agent of Bob Ross, Inc., and we would expect that PBS would identify such agent, with citation to the July claim identifying Bob Ross, Inc. before any distribution thereto. Notably, however, in the 4+ years in which this matter has been ongoing, and in hearings before the CRB, Bob Ross, Inc. has *never* indicated that a valid claim had been made during the years in issue by another agent. If one occurred and PBS intends to distribute royalties to Bob Ross, Inc. on such pretext, IPG demands that such agent be identified before IPG considers returning the funds to PBS. Consequently, please identify any agent for the years in question. We remind you that if it is PBS' intent to distribute monies to Bob Ross, Inc. based on the unverified claim that an unidentified agent made valid claim to its royalties, and in disregard of statutory filing requirements for

PICK & BOYDSTON, LLP
Ronald G. Dove, Jr., Esq.
March 9, 2017
page three

retransmission royalties, such fact would be subject to public comment and not fare well upon PBS.

Finally, for several years IPG has engaged PBS as its agent in these proceedings, and always acted in a non-adversarial manner, despite certain significant issues that IPG has had with PBS' internal distribution methods (most significantly, issues with IPG program identification). It is therefore regretful that PBS is not now reciprocating, and by all appearances is taking sides in this matter. To be blunt, while IPG had no immediate intentions of becoming adversarial to PBS, PBS' unwarranted and untimely involvement in this matter will give IPG no alternative other than to move forward in an adversarial manner.

I look forward to your response to the issues identified above. In addition, I would request that you identify the significance of your demand dates (first February 24, now March 10).

Thank you, I look forward to your response.

Sincerely,

PICK & BOYDSTON, LLP



Brian D. Boydston

COVINGTON

BEIJING BRUSSELS LONDON LOS ANGELES
NEW YORK SAN FRANCISCO SEOUL
SHANGHAI SILICON VALLEY WASHINGTON

Ronald G. Dove, Jr.

Covington & Burling LLP
One CityCenter
850 Tenth Street, NW
Washington, DC 20001-4956
T +1 202 662 5685
rdove@cov.com

Via Email and First Class Mail

March 17, 2017

Brian D. Boydston, Esq.
Pick & Boydston, LLP
10786 Le Conte Avenue
Los Angeles, CA 90024

Re: Return of 2008 Cable Royalties for Bob Ross, Inc.

Dear Mr. Boydston:

This letter responds to your March 9 letter in the above-referenced matter.

As explained in detail to you in my letters of February 7 and February 24, PBS takes no position at this time regarding any party's intentions and only wishes to ensure that the copyright owner at issue receives the royalties to which it is entitled. If IPG wishes to return the funds to PBS, then PBS will accept the entire \$19,503.66 in Bob Ross royalties paid to IPG as a result of its error and distribute those funds to the copyright owner as previously indicated. If PBS has not received these funds by March 31, 2017, it will conclude – following our previous and this correspondence – that IPG does not intend to return the funds to PBS, and will notify the copyright owner of that fact.

Sincerely,



Ronald G. Dove, Jr.

cc (via email):

R. Scott Griffin, Esq. (Assistant General Counsel, PBS)
Sandra Pope (Director of Copyright, PBS)
Edward S. Hammerman, Esq. (Counsel for Bob Ross, Inc.)
Walter Kowalski (Bob Ross, Inc.)
Joan Kowalski (Bob Ross, Inc.)

Pick & Boydston, LLP
A PARTNERSHIP INCLUDING A PROFESSIONAL CORPORATION
10786 LE CONTE AVENUE
LOS ANGELES, CA 90024
Telephone (213) 624-1996

March 20, 2017

Covington & Burlington, LLP
Ronald G. Dove, Jr., Esq.
One City Center
850 Tenth Street, NW
Washington, D.C., 20001-4956

Via Email and U.S. Mail

Re: Return of 2008 Cable Royalties for Bob Ross, Inc.

Dear Ronald,

Thank you for your letter dated March 17, 2017 regarding the above matter.

Unfortunately, you did not answer our question as to who is the agent for Bob Ross, Inc. that filed a claim with the Copyright Royalty Board for the royalty pools in question. As we made clear in our correspondence, we do not ask this idly; rather, we ask because we are unaware of any such agent, and we highly suspect that no such agent exists. If that is the case, then this money should be returned to the royalty pool, not distributed to Bob Ross, Inc.

However, if that is not the case and, to use your words, “a valid claim filed by an agent authorized by Bob Ross at the time of filing” actually exists, so be it. All we ask is that the same be demonstrated.

Thank you, I look forward to your response.

Sincerely,

PICK & BOYDSTON, LLP

/s/

Brian D. Boydston

March 24, 2017

**VIA EMAIL (brianb@ix.netcom.com)
& FEDEX OVERNIGHT DELIVERY: 7787 3297 4063**

Brian Boydston, Esq.
Pick & Boydston, LLP
10786 Le Conte Avenue
Los Angeles, CA 90024

RE: Return of 2008 US Cable Royalties for Bob Ross, Inc.

Dear Mr. Boydston:

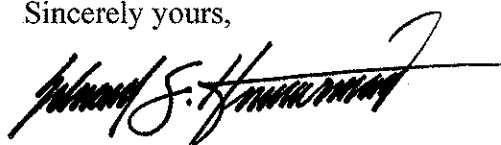
My firm represents Bob Ross, Inc. ("BRI") as copyright royalty counsel. The purpose of this letter is to follow-up with you, as counsel for Independent Producers Group ("IPG") and its affiliated entities, with respect to the letter you mailed to Ronald G. Dove, Outside Counsel to PBS, dated March 20, 2017 (attached), and Mr. Dove's email dated, March 23, 2017 (attached).

In response to your March 20 letter, Mr. Dove's email instructed my firm, as BRI's counsel, to provide you with proof that an authorized agent existed at the time IPG filed unauthorized claims for BRI's 2008 cable retransmission royalties. Between 2004 and 2011, All Global Media ("AGM") was the agent authorized to claim BRI's royalties during the time in which IPG filed unauthorized retransmission royalty claims and during which IPG received royalties based IPG's unauthorized filings. Attached are copies of (1) AGM's publicly available cable filings for the relevant years tendered to the Copyright Royalty Board; (2) a copy of BRI's agreement with AGM; (3) a copy of BRI's termination letter with AGM; and (4) an email to you dated March 4, 2013.

Based on your pleadings filed October 28, 2016, you acknowledged that (1) the Copyright Royalty Judges dismissed IPG's 2008 claims for BRI; (2) IPG conceded its error in filing 2008 claims for BRI, and (3) IPG has stated on record that it is willing to send the entire amount of royalties it received back to PBS. MGC MPAA Opposition at 31.

We reiterate our demand for IPG to return to PBS the \$19,503.66 in 2008 cable retransmission royalties that PBS paid to IPG in 2012. There is no reason to delay the refund of royalties to which IPG was never authorized to claim or collect.

Sincerely yours,



Edward S. Hammerman, Esq.
Attorney for Bob Ross, Inc.

Letter to Brian Boydston

March 24, 2017

Page 2

cc: (via email only)
Walter Kowalski
Joan Kowalski
Ronald G. Dove, Jr., Esq. (Outside Counsel, PBS)
R. Scott Griffin, Esq. (Assistant General Counsel, PBS)
Sandra Pope (Director, Copyright Administration, PBS)

Pick & Boydston, LLP
A PARTNERSHIP INCLUDING A PROFESSIONAL CORPORATION
10786 LE CONTE AVENUE
LOS ANGELES, CA 90024
Telephone (213) 624-1996

April 12, 2017

Covington & Burlington, LLP
Ronald G. Dove, Jr., Esq.
One City Center
850 Tenth Street, NW
Washington, D.C., 20001-4956

Via Email and U.S. Mail

Edward Hammerman, Esq.
5335 Wisconsin Ave., NW, Ste. 440
Washington, D.C., 20015

Re: Return of 2008 Cable Royalties for Bob Ross, Inc.

Gentlemen,

It is with frustration that I read Mr. Hammerman's letter of March 24, 2017 regarding the above matter, which again ignores facts that have been set forth for years in pleadings filed with the CRB, and which attributes IPG with positions taken over four years ago prior to full disclosure by Bob Ross, Inc. of relevant documentation, and prior to actionable acts taken by Bob Ross, Inc.

To summarize, IPG entered into multiple agreements with Bob Ross, Inc., and made claim for its programming for several years. Notwithstanding, former IPG principal Marian Oshita failed to turn over any IPG records in her possession, and IPG could only locate the agreement relating to broadcast year 2001, although IPG knew that additional agreements existed. Believing that Marian Oshita had executed an Extension Agreement with Bob Ross, Inc., as opposed to multiple one-year agreements, and believing that IPG had a continuing obligation to make claim for Bob Ross, Inc., IPG made annual July claims filings identifying Bob Ross, Inc. as a joint claimant on all IPG claims for 2004 and subsequent.

For more than a decade IPG received royalties from various sources that were attributable to the Bob Ross, Inc. programming and regularly accounted to Bob Ross, Inc., always identifying in accountings from where the royalties were attributable and for which broadcast years. Bob Ross, Inc. accepted such royalties and accountings attributable to broadcast years 2001 through 2007, made no challenge thereto, and never indicated that IPG was acting beyond its authority.

On January 9, 2013, IPG received an accounting from PBS for IPG-represented programming royalties distributed for 2008 broadcasts of the PBS non-commercial programming category. Such accounting included royalties attributable to the programming of Bob Ross, Inc., and IPG was required to account to Bob Ross, Inc. no later than April 30, 2013.

Notwithstanding, on or about January 16, 2013 (i.e., seven days after IPG's receipt of the royalties), IPG's counsel was contacted by Mr. Hammerman, as counsel for Bob Ross, Inc., and requested to provide a list of all amounts previously paid to Bob Ross, Inc. over the prior several years. IPG's counsel immediately contacted Bob Ross, Inc., and for the first time, Bob Ross, Inc. informed IPG that it had previously terminated its agreement with IPG for royalty years 2004 and prospectively. According to Mr. Hammerman, Bob Ross, Inc. had previously entered into an agreement with All Global Media for such time frame, and wanted IPG to pay the entirety of amounts collected by IPG over to Bob Ross, Inc., without a deduction for IPG commissions.

As was immediately explained to Bob Ross, Inc., IPG had discovered the existence of All Global Media, and discovered that Ms. Marian Oshita was the principal of All Global Media. Ms. Oshita was legally precluded from competing with IPG while she was a member of IPG (which did not definitively conclude until 2012, I believe), and any rights acquired by Ms. Oshita as a principal of All Global Media had devolved to IPG. In fact, in those circumstances in which All Global Media had convinced IPG clients to execute written contracts, each such client asserted that Ms. Oshita misrepresented that IPG had "changed its name" to All Global Media, then requested execution of a new agreement between the claimant and All Global Media, with the claimant believing that they continued to maintain a relationship with IPG.

After being informed of the foregoing, and desirous to avoid revelation that Marian Oshita was the representative of All Global Media with whom Bob Ross, Inc. dealt with and contracted, Bob Ross, Inc. refused to provide IPG with the All Global Media agreement or related correspondence. Despite IPG's requests therefor, Bob Ross, Inc. only first produced the contracting document as an exhibit to the SDC's *Written Rebuttal Statement on Claims Issues Only*, filed October 15, 2014, purposely obfuscating Ms. Oshita's involvement in All Global Media for more than a year and a half. All of the foregoing information appears in and is substantiated by evidence submitted in pleadings filed with the CRB, and authored by the Settling Devotional Claimants ("SDC") and by IPG.

In Mr. Hammerman's most recent letter, Bob Ross, Inc. again mischaracterizes All Global Media as a valid agent with rights capable of segregation from those of IPG. Moreover, Mr. Hammerman attributes positions to IPG that were taken by IPG prior to disclosure of relevant documentation by Bob Ross, Inc. (*all* relevant documentation has yet to be provided, e.g., correspondence with All Global Media, accountings from All Global Media), and prior to actionable conduct by Bob Ross, Inc., whereby its counsel knowingly and falsely accused IPG of having engaged in a "fraud". Mr. Hammerman also falsely asserted that a filing by Multigroup Claimants in October 2016 continues to extend an offer made by IPG several years prior, where no such reference exists.

Finally, Mr. Hammerman's letter should be exposed for what it is – correspondence intended to memorialize an incorrect record of the foregoing for the purpose of contriving new issues for the 2010-2013 proceedings, even though neither IPG nor Multigroup Claimants has made claim for Bob Ross, Inc. in such proceedings. This rather transparent strategy is demonstrated by the fact that Mr. Hammerman purportedly provided the SDC only one side of the correspondence (letters authored by PBS), only for the SDC to immediately allege that Multigroup Claimants had failed to comply with discovery, even though Mr. Hammerman is counsel to SDC claimants and either had or could have obtained such correspondence firsthand.

At this juncture, IPG considers this matter closed, amongst all parties. IPG's position on these matters, which has been addressed *ad nauseum*, will not be addressed again. Nevertheless, if either party – Bob Ross, Inc. or PBS – persists in addressing this matter further, then consider this letter to be simultaneous demand for copies of all correspondence between All Global Media and either party, including copies of any accountings from or to All Global Media, *and* all correspondence between Bob Ross, Inc. and PBS, including but not limited to copies of any accountings. IPG initially determined that it would not press to enforce the rights held by All Global Media, but is under no obligation to maintain such position, and will pursue rights legitimately held by All Global Media (and, *ergo*, IPG) if either Bob Ross, Inc. or PBS again raises these issues from more than four years ago.

Sincerely,

PICK & BOYDSTON, LLP

/s/

Brian D. Boydston

JOHN HARGETT ASSOCIATES, LLC
FORENSIC DOCUMENT EXAMINATIONS
& INTERNATIONAL TRAINING
A REGISTERED LIMITED LIABILITY COMPANY

March 13, 2020

Matthew J. MacLean, Esq.
Pillsbury, Winthrop, Shaw, Pittman, LLP
1200 Seventeenth Street, NW
Washington, DC 20036

Dear Mr. MacLean:

The following report is the subject of your request of March 9, 2020.

SUBJECT: Ryan T. Galaz (File No. 20-1062).

TYPE OF EXAMINATION: Handwriting

EXHIBITS EXAMINED:

The following documents were received on March 9 and 10, 2020.

Q-1 A machine copy of a two page Articles of Organization for Florida Limited Liability Company bearing a purported signature of Ryan Galaz on page no. 2.

Q-2 A machine copy of a two page Declaration of Ryan T. Galaz, dated 18 July 2017 bearing a purported signature of Ryan T. Galaz on page no. 2.

Q-3 A machine copy of a two page Declaration of Ryan T. Galaz, dated 12 August 2017 bearing A purported signature of Ryan T. Galaz on page no. 2.

Q-4

[REDACTED]

Q-5

[REDACTED]

S-1 Machine copies of a document marked Exhibit 1 containing two signatures and the signature Page from a deposition transcript bearing the notarized signature of Ryan Galaz.

PROBLEM:

To determine whether the Ryan Galaz signatures on Exhibits Q-1, Q-2 and Q-3 were written by one or more writers.

[REDACTED]

RESULTS OF EXAMINATION:

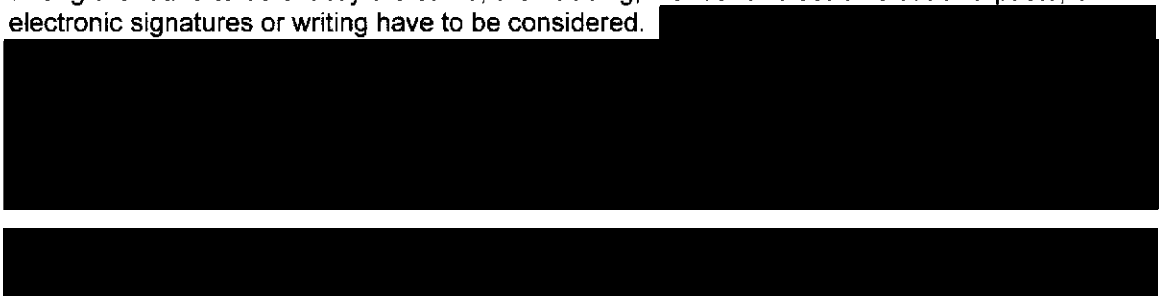
In comparing handwriting, one examines whether the writing departs from a copybook system (taught system) or the norm. Style, skill of the writing, letter formations, size and size relationships (size of one letter to another), spacing, speed, attention to the baseline or imaginary baseline of writing, idiosyncrasies, etc. are all taken into consideration.

A study and comparison of the Ryan Galaz signatures appearing on Exhibits Q-1, Q-2, and Q-3 has revealed evidence to suggest that the signatures are written by perhaps two different writers and possibly three.

A comparison of the purported S-1 Ryan Galaz signatures with the three questioned signatures resulted in the conclusion there is a strong probability Ryan Galaz wrote his name on page two of Exhibit Q-1.

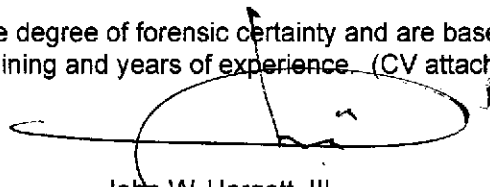
Further, with the material available for comparison, there is some evidence Ryan Galaz may have written his name on Exhibit Q-2, but the evidence is far less than conclusive. Ryan Galaz cannot be associated with the Ryan Galaz signature on Exhibit Q-3.

No one writes exactly the same way twice. There is variation in everyone's writing. This is normal and natural and expected to be found when examining handwriting. When signatures or writing are found to be exactly the same, then tracing, manual or electronic cut-and-paste, or electronic signatures or writing have to be considered.



REMARKS:

The opinions expressed are to a reasonable degree of forensic certainty and are based on the features contained within the writing, my training and years of experience. (CV attached)



John W. Hargett, III
Forensic Document Examiner

SIGNATURES DESCRIBED IN REPORT

EXHIBIT Q-1



Signature of a member or an authorized representative
is executed in accordance with state

EXHIBIT Q-2


Ryan T. Galaz

EXHIBIT Q-3


Ryan T. Galaz

EXHIBIT S-1

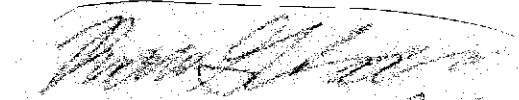

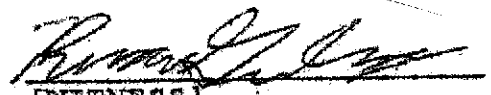

RT 

[WITNESS]

EXHIBIT Q-4

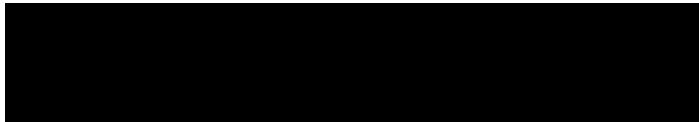
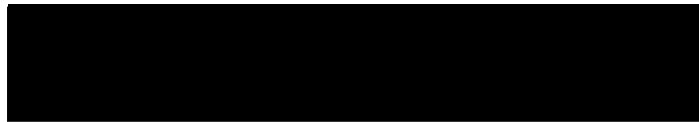
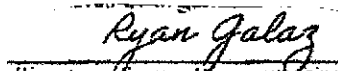


EXHIBIT Q-5



DOCUMENT DATED 9/19/16


Signature of a member or authorized

CURRICULUM VITAE

JOHN W. HARGETT, III

Position: Forensic Document Examiner
John Hargett Associates, LLC
3004 Courtside Road
Mitchellville, MD 20721-2525

Services: The examination of questioned documents. These examinations usually include the identification of handwriting and handprinting, the determination as to the sequence of preparation of documents or parts of documents, and the analysis of other features of documents that may provide information of evidentiary value. Testimony is provided regarding the results of examinations when required. Also provide training and international technical assistance.

Experience: 1967 – 1969 Document Examiner Trainee
U. S. Postal Inspection Service
Washington, DC

1969 – 1971 Examiner of Questioned Documents
Metropolitan Police Department
Washington, DC

1971 – 1983 Examiner of Questioned Documents
U. S. Secret Service
Washington, DC

1983 – 1987 Examiner of Questioned Documents
Washington, DC
(Private practice)

1987 – 1998 Chief Document Examiner
U. S. Secret Service
Washington, DC

July 1998 – Forensic Document Examiner
John Hargett Associates, LLC
Mitchellville, MD

Professional Affiliations: Forensic Science Society
International Association for Identification
Association of Former Agents of the United States Secret Service

Certification: Certified – United States Secret Service

Publications/ Presentations: "Classification and Identification of Checkwriters", Journal of Police Science and Administration, Vol. 4, No. 4, 1976.

"The Document Examiner: An Investigative and Prosecutive Tool", Maine Trooper, Vol. 3, 1983.

"A Comparison Study of the Handwriting of Adolescents", Forensic Science International, Vol. 42, No. 3, 1989. Presented at the American Academy of Forensic Science, Philadelphia, PA, February 1988.

"The International Ink Library", International Criminal Police Review, No. 425, 1990. Presented at the Ninth INTERPOL International Forensic Science Symposium, Lyon, France, December 1989. Updated version presented at the Tenth INTERPOL International Forensic Science Symposium, Lyon, France, November 1992.

"Status of the U. S. Secret Service Ink Dating Program", Kriminalistik und Forensische Wissenschaften, No. 82, 1994. Presented at the Mannheim Symposium, Humboldt University, Berlin, Germany, April 1993.

"A Comparison Study of the Handwriting of Adolescents." Presented at the 10th Australia International Forensic Science Symposium, Brisbane, Qld, Australia, May 1988.

"U. S. Secret Service Ink Identification System." Presented at the Canadian Society of Forensic Science Annual Meeting, Toronto, Ontario, Canada, October 1988.

"A Forensic Look at Some Document Falsification Techniques." Presented at the Fourth European Conference for Document Examiners, Linköping, Sweden, August 1992.

"The Utilization of Automated Handwriting Technology for Assisting Law Enforcement." Presented at the 4th European Conference for Police and Government Handwriting Experts, London, England, October 1994.

"Forensic Laboratory Information System for Evidence-Tracking." Presented at The 4th European Academy of Forensic Science Conference, Helsinki, Finland, June 2006.

| | | |
|--------------------|-------------|---|
| Instructor: | 1970 – 1986 | U. S. Secret Service Questioned Document Course, Washington, DC |
| | 1996 & 1997 | International Law Enforcement Academy Document Examination Seminars, Budapest, Hungary |
| | 1983 – 2006 | U. S. Secret Service Questioned Document Course for State and Local Law Enforcement, Federal Law Enforcement Training Center, Brunswick, GA. |
| | 2000 – 2006 | U. S. Secret Service Advanced Questioned Document Course for State and Local Law Enforcement, Federal Law Enforcement Training Center, Brunswick, GA. |

Guest Speaker: Maine Criminal Justice Academy, Waterville, ME.

Federal Public Defenders Association Annual Conference, Washington, DC.

Maine Trial Attorneys Association Annual Conference, Portland, ME

Tri-State International Association of Credit Card Investigators Conference, NJ.

Florida Chapter International Association of Credit Card Investigators, Orlando, FL.

Counterfeit Seminar, Prosecutor General's Office, Guadalajara, Mexico.

77th Annual Educational Conference, International Association for Identification, Atlantic City, NJ.

Mannheim Symposium, Humboldt University, Berlin, Germany

5th European Conference for Government Document Examiners, Lisbon, Portugal.

Northwest Fraud Investigators Association 1998 Annual Conference, Sun River, OR.

Alabama District Attorneys Special Services Division Association 2002 Fall Conference, Birmingham, AL

Testimony: Testified over 450 times throughout the United States in criminal and civil matters and in foreign courts of law as an expert in forensic document examination and handwriting identification. These testimonies have been in Federal, state and local courts of law as well as Military Courts Martials. May 1989 and May 1990, provided expert document testimony before the U. S. House of Representatives, Subcommittee on Oversight and Investigations of the Committee on Energy and Commerce.

Miscellaneous: In 1992, selected by the U. S. Department of State as the document expert representing the United States and as such conducted an examination of a questioned treaty between the U. S. and the country of Iran at the International Tribunal (World Court), The Hague, Netherlands.

United States Delegate to the European Conference of Experts on Documents, Rome, Italy, 1990; Linkoping, Sweden, 1992; and Lisbon, Portugal, 1994; and to the Fourth European Conference for Police and Government Experts, London, England 1994.

Represented the U. S. Secret Service as an expert on questioned document matters in 23 foreign countries.

August 1988 through May 1990 Consultant on document examination to the Sub-Committee on Oversight and Investigations of the Committee on Energy and Commerce, U. S. Congress, House of Representatives.

1991 Recipient of the Inspector General's Integrity Award.

January 1999 through December 2005 served as the United States Treasury Department, Office of Technical Assistance (OTA), Contract Law Enforcement Advisor for forensic science in the Republic of Moldova.

February 2003 and July 2004, as a contractor for the United States Justice Department, International Criminal Investigative Training Assistance Program (ICITAP), conducted an assessment of the forensic laboratory needs for the Countries of Georgia and Montenegro.

August 2006 Consultant for CNN and FOX Cable News regarding handwriting of suspect John Mark Karr in the JonBenet Ramsey murder investigation and appeared on each TV station with results of examination.

October 2006 through March 2007 Chair of the Tender Evaluation Committee, Netherlands Organization for International Cooperation in Higher Education for the selection of the Dutch provider for the Immigration Department of Tanzania in the field of Document Examination.

August 2007, contract forensic evaluator in the country of Nepal for the Anti-Terrorism Assistance Program, Office of Diplomatic Security, U. S. State Department.

September 2002 through 2009 served as the contract Senior Forensic Advisor In the Republic of Bulgaria for the United States Justice Department, International Criminal Investigative Training Assistance Program (ICITAP).

2009 Examination of purported signatures of Salvador Dali on numerous works of art.

June 2010 contract Forensic Document Examiner for the United States Justice Department, International Criminal Investigative Training Assistance Program (ICITAP) to provide training for the Ministerio Publico, Asuncion, Paraguay.

Proof of Delivery

I hereby certify that on Monday, March 16, 2020, I provided a true and correct copy of the Appendix Volume 2 - Public Redacted to the following:

Multigroup Claimants (MGC), represented by Brian D Boydston, served via Electronic Service at brianb@ix.netcom.com

Public Television Claimants (PTC), represented by Dustin Cho, served via Electronic Service at dcho@cov.com

MPA-Represented Program Suppliers (MPA), represented by Alesha M Dominique, served via Electronic Service at amd@msk.com

National Association of Broadcasters (NAB) aka CTV, represented by John Stewart, served via Electronic Service at jstewart@crowell.com

Joint Sports Claimants (JSC), represented by Michael E Kientzle, served via Electronic Service at michael.kientzle@apks.com

Canadian Claimants Group, represented by Victor J Cosentino, served via Electronic Service at victor.cosentino@larsongaston.com

Signed: /s/ Matthew J MacLean